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MISSISSIPPI STATE BAR ASSOCIATION

PROCEEDINGS

OF THE

TWENTY-FIFTH ANNUAL MEETING

OF THE

MISSISSIPPI STATE BAR ASSOCIATION

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VOL. III AUGUST, 1930 NO. 1

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HELD AT

Biloxi, Mississippi, April 30-May 1, 1930

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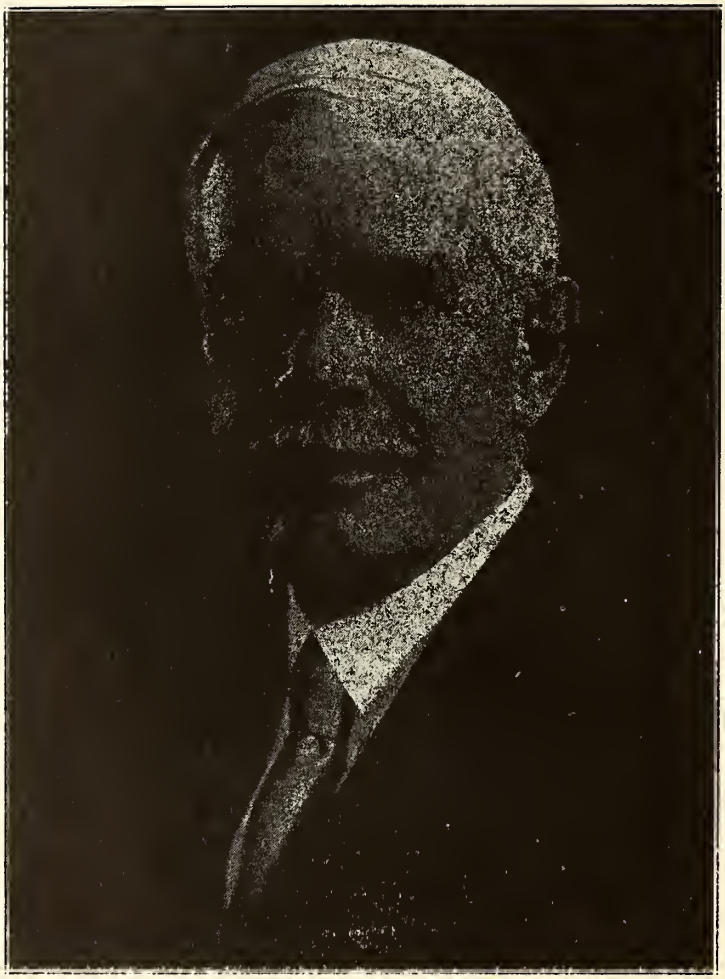

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MISSISSIPPI LAW JOURNAL

JOURNAL of the MISSISSIPPI STATE BAR ASSOCIATION

Vol. III AUGUST, 1930 No. 1

HOPES OF THE NEW ADMINISTRATION

The administration assumes office fully conscious of the grave responsibility resting upon it. We are aware that the Association faces a crisis. We cannot stand still. If we do not go forward we will surely go backward.

We can do nothing without the sympathetic cooperation of the members of the Association. It is encumbent upon each to prove that one of the real objects of the Association is to "maintain the honor and dignity of the profession of law."

Personal and political friendship and animosities are out of place here.

We shall feel we have not hoped and striven in vain if we shall conscientiously and fairly carry out the prosecutions directed and the investigations ordered at the last annual meeting, and we shall have made progress in the re-organization of the Association so it shall truly be representative of the Bar of the State and membership therein be made to be considered a badge of merit.

GEO. BUTLER, President,
Mississippi State Bar Association.

PROCEEDINGS

OF THE

Twenty-Fifth Annual Meeting

OF THE

Mississippi State Bar Association

HELD AT

BILOXI, MISSISSIPPI

April 30th and May 1st

1 9 3 0

PROCEEDINGS OF THE TWENTY-FIFTH ANNUAL MEETING OF THE

MISSISSIPPI STATE BAR ASSOCIATION

BY THE PRESIDENT: Gentlemen of the Mississippi State Bar Association: I have the pleasure of calling to order the Twenty-fifth annual meeting of the Mississippi State Bar Association. I will ask Doctor John Campbell to return the invocation.

The invocation was here offered by Dr. John Campbell.

BY THE PRESIDENT: At this point we will have an address of welcome by Honorable Hanun Gardner, of the Harrison County Bar.

BY MR. HANUN GARDNER: Mr. President, Members of the Mississippi State Bar Association, Ladies and Gentlemen: It is my signal privilege to extend you a wholehearted welcome as the guests of the Harrison County Bar. In times past you have conferred upon the Mississippi Coast the honor of being your host, and, by your assembling again with us, we construe it as an expression that you enjoyed your former visits. The Mayor of the City of Biloxi will officially bid you welcome, and in this the entire Bar of the Coast will heartily join. The people of the Coast do not regard geographic boundary lines, and in a commendable spirit consider ourselves one great community, with a common interest.

We would not have you consider us too vain or presumptuous, but the fact that you accept our invitation to come to the extreme southern part of the State does of itself flatter us into the belief that the Coast has appealing and alluring charms unequalled by any other portion of the State.

In this beautiful city of Biloxi you convene upon historic grounds. It has the honor of being the third oldest city in the United States. Romance and the lure of adventure impelled D'Iberville and other kindred spirits of the finest French blood to seek here the discovery of new worlds.

History records that the flags of five different nations have flown over and proclaimed sovereignty in this city. In the veins of many of its citizens courses the finest blood of the five nations contributing to its settlement. Thus, in part, do we attribute the delightful charm and hospitality of its people. Other cities of our country may have greater wealth, more ornate and stately buildings, but a kind Providence has been bountiful in bestowing upon it a natural, an appealing charm, and beauty beyond compare. We of Harrison County proudly, even boastfully, count the City of Biloxi a highly prized heritage, belonging in common to all of us.

The timber in our forest has in times past brought the Coast in commercial contact with every nation. The flag of every maritime country has often flown in our ports. Almost immeasurable wealth can annually be taken from the waters adjacent to our shores, the existence of which has brought fame to this fair city. The masts and sails of its hundreds of ships constitute an appealing attractiveness to all who do not dwell upon navigable waters. While we are not unmindful of the prestige these commercial affairs bring to Biloxi and the coast, nevertheless we take more pride in the renown which Biloxi richly deserves because of its enchanting and picturesque beauty.

Nowhere else in the world, so we are told, do we find (except on this wonderful Coast country) the blue waters of the sea rippling at the very feet of the green verdure of forest of pine, oaks and magnolia.

We welcome you in our midst, to share with us the beauty of our country by land and by sea. It not only affords us a great pleasure to have you as our guests; we consider it an honor. Without intending any disparagement of any other profession or calling, I think we are justified in saying, no body of men are the peers of the members of the legal profession in ability, character and integrity. No class of our citizenship prescribes a higher code of ethics nor require a more scrupulous observance of an honorable standard of conduct. The affairs of men have become so complex the responsibilities which rest upon lawyers are immeasurable. In every crisis the lawyer has rendered the service stern duty required, whether as an advocate, on the bench, or in governmental affairs, or on the field of battle. Such a body of men we esteem it a distinct honor to have as our guests.

You are thrice welcome as guests of the Bar of the Coast.

The wish that lies nearest our hearts is that when you turn your faces homeward your minds and hearts will be laden with happy and delightful memories of your visit. (Continued Applause.)

BY THE PRESIDENT: We will now have an address of welcome by Honorable John J. Kennedy, Mayor of Biloxi.

BY HON. JOHN J. KENNEDY: Mr. President, Members of the State Bar Association, Ladies and Gentlemen: It is a real pleasure that I have the opportunity this morning of extending you a welcome to Biloxi.

You know, the most pleasant things in life are the things that are unexpected. It was just a short while ago we knew you were coming to Biloxi. You are certainly welcome here. I might emphasize some of the remarks that Hanun Gardner made as to why you should feel at home on the Mississippi Gulf Coast. In saying that, I will not say what Gerrard Saunders said to Governor Noel, when Saunders was Governor of Louisiana and came to the presentation of the battleship service to the Battleship Mississippi. He came from New Orleans on one of the Navy boats. He went out there, and the water was rough. I tried to go out myself, and the water was too rough. He did not find Governor Noel at the banquet that night. He said he was surprised not to find Governor Noel after the long trip he had made there, how embarrassed he was to not find him at the Battleship waiting for him, because, he said, if there was any place he would expect to find Governor Noel it was out there where all that water was. I will not say that is the attraction that brings the members of the Bar Association here.

But, as Hanun Gardner says, there are many romances on the Coast. This is a delightful place. Those who live on the Gulf Coast recognize that, have always recognized, and, in fact, we recognized it so much in the last boom, when we sold a piece of property we bought another, and we still have it.

I would like for your attendance here to be larger. I hope that this meeting has not been confined to the pure at heart; and I want you who are here to know that the welcome Biloxi extends to you is real, and is genuine; and I feel safe in turning the city over to you—to just let you run the city—run it as you want to run it. The welcome that we extend to you today bears investigation, and there are a lot of things in Mississippi that do not. You can go

the limits on the way we feel about you being here; and if there is anything at all we can do for you, let somebody know, and we will see that you have a good time.

We are particularly anxious that the ladies who are with you enjoy this trip, and they are in good hands—in the hands of Mrs. White and Mrs. Guice, and some other ladies here, and we want you to feel that while we welcome the men folks, our welcome has even more warmth for you. (Applause.)

BY THE PRESIDENT: We will now have response to the addresses of welcome by Judge G. Garland Lyell, of the Jackson Bar.

BY JUDGE G. GARLAND LYELL: Mr. President, Mayor Kennedy, Mr. Gardner, Members of the Bar, Ladies and Gentlemen: That is quite a gathering, but I believe everybody is included in that. On behalf of the visiting lawyers, I extend to you our deepest gratitude and esteem for the hearty welcome which you have accorded us.

We are accustomed to being welcomed not only with words but by action on the Coast. We feel we are a part and parcel of it with you.

As I contemplate the genial features of your distinguished Mayor, and his long tenure in office, I have not yet heard anyone suggest that our frowning down under our Constitution and laws upon perpetual tenure has any application to the Coast region. Perhaps, on occasions at least, other laws are abrogated and repealed.

It is a great pleasure to come to a section of our State where we still measure land by rods, and the yield per acre in gallons.

The Mayor has indicated, and Mr. Gardner, that welcome must appear in other ways than words; but your welcome is most eloquent, not only in words, but you make a follow-shot in the delightful attention which you show the visitors here that makes us more than thrice welcome. It is not three up and three down, but when at the bat you put them over the plate as long as we stay here. That may be a mixing of metaphors and legal terms, but I hope you all get the idea.

Now, it is a great pleasure for lawyers to meet with one another, and to meet the wives of lawyers, to meet court officials, to meet those who are interested in the Bar, as most laymen are; and I think all of us feel that the gather-

ing here this time possesses some features of unusual significance. I think, considering the fact that the legislature is still with us, and many members of that body are necessarily kept away from the pleasures of a union with their brethren of the Bar and other friends here on the Coast; yet, I think, everything considered, the attendance is splendid; and while we regret that we could not hold a meeting at the University of Mississippi, I have not heard any lawyer representing anyone object when the motion for a change of venue was made. It was thought that the Coast would give us a fair square trial; we have often tried it and it has never been found wanting.

Growing very serious for the moment, and perhaps not being apropos, and perhaps I should not say anything about it in responding to a welcome address; but it goes without saying that at this time and place the eyes of the rest of the Bar and the laymen of this State rest upon us with a fixed stare and fixed gaze. The question is: What are we going to do? We remember the line of the old hymn, "Watchman Tell Us of The Night." We must take stock here, gentlemen; we must ask ourselves: "Watchman Tell Us Of The Day," and tell those of us who convert the day into the night. Let us take stock of ourselves; let us examine ourselves. Far be it from any of us, and particularly myself, to rise up and criticize, or to suggest what ought to be done, or what ought not to be done; but it goes without saying that there never was a time in the history of this State when the Bar of Mississippi has been so on trial as it is now; we cannot get away from it. I remember at the American Bar Association meeting in October one of the outstanding addresses was delivered by that splendid lawyer, a former United States District Attorney, Emory R. Buckner, when he discussed the question of character requirements for admission to the Bar. His address before that Association attracted the marked attention and interest of all who heard it and of all who read it; and what he had to say was this: That while it is important that—I think we might say those who have barely attained their majority—should possess certain educational and moral fitness for the Bar, that rather the acid test is not merely character requirements for admission to the Bar, but character requirements for retention in the Bar. (Applause.)

And gentlemen of this Association, we are in the glare, and the searching glare, of the people of the State of Mississippi; and not only those within the confines of this commonwealth, but those outside, because we have been

advertised as far as the radio and Associated Press dispatches can carry news to the corners of the globe.

Let us take stock of ourselves; let us see where we stand, individually and collectively, and for what we stand; and I believe when the matters have received the attention that they will receive at the hands of the committees of this Association, and this Association as a whole, they will be handled in a way that they deserve, and that everybody will be treated right and no wrong will be done anyone; but that searching glare and scrutiny of the Association will be devoted, and with all the time and attention necessary by the lawyer members of this Bar in determining where we stand when the balance sheet is struck. I must apologize for introducing that serious subject.

And Mayor Kennedy, may you continue perpetually in office; we thank you for the splendid words of welcome you have given us; and our brother in the law, one of the outstanding exemplars at the Bar of Mississippi—we are here and having a good time, and it will increase in geometrical progression, I am sure. (Applause.)

BY THE PRESIDENT: Gentlemen of the Bar Association, I think it is proper at this time for me to say to you that the University and Oxford communities regret very much they could not have the Association meet with them on this occasion. It was not practical, however, to have the Association meet there this year, however much we wanted you to meet with us. I want to thank these splendid communities here—the Biloxi and Gulfport communities—for their invitation to us to meet with them when they found it would be impracticable to meet at the University and the Oxford communities. We appreciate the splendid way in which you asked us to be with you on this occasion, and we are all glad that we can meet with you.

Now, gentlemen, it becomes my duty as President of the State Bar Association to inflict upon you an address. I always feel for the Association when they have to sit and listen to the President's address. I am not going to take up any great length of time this morning with my address, but there are certain matters which I want to call to your attention, and to which I am going to ask your attention.

ANNUAL ADDRESS OF THE PRESIDENT BEFORE THE MISSISSIPPI STATE BAR ASSOCIATION BILOXI, MISSISSIPPI, APRIL 30, 1930

Article XII of the Constitution of the Association provides, among other things, "The President of the Association shall open each annual meeting with an address, in which he shall communicate the most noteworthy changes in the statute law, on points of general interest, made in the state and by congress during the preceding year, or he may speak upon such matters of current interest as he may deem of value to the Association."

I shall avail myself of the privilege afforded by the last clause above quoted, and confine my remarks largely to matters of current interest and to certain recommendations which I feel should be brought to the attention of the Association for its consideration, if perchance they are thought worthy of notice.

Recent years have been most fruitful in suggestions for change in both basic and procedural law. It therefore has seemed that at the beginning of our deliberations we may with some profit survey the existing judicial order and the need, character, and possibilities of certain of the plans, proposals, and movements for its improvement.

Though our substantive law, both civil and criminal, has been in the making since the very beginning of Anglo-Saxon jurisprudence, it is still more involved and complex than need be. There is respectable authority for almost every conceivable view of the law applicable to a given state of facts. The greater the number of litigated cases, the more difficult it becomes to reconcile the authorities and the more burdensome and onerous the duties of the lawyer and court.

To meet the demand for relief from the situation, the American Law Institute was organized in 1923, to simplify and clarify the common law, to make it more adaptable to social and economic needs, to promote scientific research and to secure a more efficient administration of justice. It is thought by some, no other like undertaking since the days of Justinian rivals the restatement now in process. If it can be made so as to give it the voice of authority, it will end much of the old conflict and search for authorities. It would greatly simplify the process of applying the law because the law applied itself will have been simplified. Many there are, however, among the members of the bar who are apprehensive that no great good will come from this undertaking. It is keenly to be regretted that by reason of the inadequate teaching group in our state law faculty our proper and natural share in this great work, namely, annotating our decisions and statutes, to the restatement, is almost an impossibility.

Parallel with this movement is the growing realization that the substantive law must be suited constantly to new needs as they arise. Never have there been such marked, sudden, and swift changes in our industrial, political, and economic condi-

tions. And with each shift in conditions come changing conceptions of justice. Mark, how far we in this state have grown away from many laws found in the early statutes of the state, to illustrate, for the commission of certain misdemeanors it was once thought but tardy justice, if the offender was given but "twenty-seven licks on the bare back well laid on." Our notions and conceptions of the punishments to be meted out for crime by reason of the changes wrought in our civilization through the years, has been great.

Doctrines which are the appropriate products of one period to assure justice, in a later period are modified, or supplanted, to avoid injustice.

At no distant past in the history of the law of evidence in our state, interested parties were incompetent to testify, the wife could not testify, all on the ground of public policy. That section of the code, venerable with age, which provides that one may not testify to establish his claim or defense against the estate of a deceased person, or a non compos mentis, etc., now reads in the "Dummy Code," such person may testify to establish his claim or defense in such case, provided, etc. Many doctrines and statutes when first promulgated rest solely upon public policy and later yield to other doctrines upon the same consideration, for the preponderant opinion as to what is necessary to the well being of the race today will bear quite a different emphasis tomorrow.

One aspect of development is the growth of interest in the law as a science. The crime commissions and judicial councils recently organized are the most apparent evidence of the tendency. The law schools of the country are now putting into their curricula courses dealing with the historical and philosophical aspect of the law and I think I may safely say the profession, as a whole, turns more tolerantly, if not more eagerly, than formerly to such phases of the law.

Though there are positive efforts to improve the basic thing with which the administration of justice has to do, insofar as there are short-comings in applying the law, they are generally attributed not to the law itself, but to the media or agency through which it is applied. The odium for failures in administration is heaped upon the law of procedure, and for the most part the legal reforms suggested have been calculated to facilitate the disposition of cases. Especial attention to the law of procedure seems necessary, because, as a rule, it has always been less adaptable to change than the substantive law. The law of procedure has lagged amidst a growing substantive law.

Certain as it seems that the present situation can be materially improved, there is at hand no ready made scheme which insures improvement. The agitation which led in this country to the proposal of the code system, after prolonged discussion, experiment, observation and legislation, led in England to the adoption in 1873 and 1875 of the judicature acts, which swept

away the system of common law pleading there more completely than the codes, in what we term the code states, swept it away here.

I pause here to pay tribute to the great Judge J. A. P. Campbell for the great work he accomplished in this state in simplifying the procedural law in the circuit courts of the state. He broke the tentacles of the relentless common law procedure and made way for a new day in the trial of cases in our circuit courts.

The English Judicature Acts confer upon the courts the regulation of pleading, practice and procedure in the several courts. The rules of judicial procedure are framed by the courts and not for them. In support of such a system it is urged that the prescribing of procedure requires expert knowledge and can be more intelligently done by experienced lawyers and judges than by legislative committees composed in large part of laymen; that defects of procedure can be more readily cured under rules of our court, than under a procedural code, and that the tendency of such codes, as their history shows, is to fossilize, as the common law procedure fossilized, unless experienced and trained lawyers and judges are authorized to adapt them to new conditions.

The powers to prescribe the procedure in equity cases in the federal courts is being successfully exercised by the Supreme Court and there is strong sentiment for placing in the court the same power with respect to cases at law. The power conferred upon the courts of Oregon, Washington, California, and Michigan and other states, has been given a trial. The reports coming from all of these states clearly and unmistakably indicate the bar is entirely satisfied with the results obtained. American lawyers who have visited England within the last few years, and who made some examination into their court procedure, as indicated by press and law journal articles, are loud in their praise of the directness and speed and effectiveness with which the courts there function, and much of the credit is given to the rule making committee and judicature acts.

While the idea of substituting rules of court for codes has and is receiving tremendous impetus, and bids fair in the end to prevail, there is much which may be done to make the existing system more effective. Proposals at least worthy of investigation are, declaratory judgments, which have already been adopted by the great State of New York and twenty other leading states. The question is being studied by several State Bar Associations at the present time, notably among them, being the Nebraska Bar. The American Bar Association has put its stamp of approval upon such acts; summary judgment act to meet the habitual interposition of answers and pleas solely for delay; the reduction of the time for appeal; verdicts in both civil and criminal cases by a majority of the jurors and other provisions, which might be mentioned, with which there has been experience elsewhere.

Much complaint is heard from many quarters about the apparent breaking down of criminal justice. The agencies for keeping

statistics in the various states are so inadequate and inefficient that it is impossible for one interested in the subject to determine with any degree of certainty to what extent criminal law is failing to meet the needs of society. While the crime situation which has been discussed so much elsewhere seemingly has not changed for the worse in this state, we nevertheless are concerned with the general problem and no one, I feel confident, would claim that there may not be some improvement here.

The condition of which complaint is made is attributed, according to the inclination of observers, to many and divers causes, varying from white mule to the waning of religious faith, from childhood complexes to the wander lust of the modern American, and from the foreign element in our population to glandular defects.

Study of the question by committees and researches by students have resulted in stress in defects in criminal procedure and in suggestions of numerous changes in it. Among the most frequent changes suggested might be enumerated the following: reducing the indictment to the simplest form; admission to bail made more difficult; that the issue of insanity be determined by experts selected by the court; the right to change of venue by state and defendant be the same; that the waiver of jury trials in felony cases be permitted; that the states right to appeal be enlarged; that a majority of the jurors be allowed to return a verdict; and that the time for appeal be reduced and the hearing thereon be promptly held.

To those of us trained in the existing criminal jurisprudence, some of the suggestions no doubt will seem like hazardous innovations which strike at the very roots of fundamental rights of one accused of crime. Intelligent judgment upon such proposals should and must take into account the historical background of the existing substantive and procedural law. The trial methods of English prosecutors and judges in the Seventeenth and early part of the Eighteenth centuries, and the use of the criminal law as an agency of religious persecution, were so vividly remembered that the primary problem in the formative days of our national and state governments was the protection of the person accused of crime against oppression. In consequence stringent provisions were adopted to protect the accused against unfair trials. The cumbersome machinery of the common law was provided to safeguard the liberty of the individual, the trial courts were shorn of powers possessed in England, and unusual powers were conferred upon juries. Judicial justice had not yet been developed and there was need of protection against the oppression of royal governors and judges. Fortunately for us the old tendency to oppress has passed away. In the substantive law the interests of society are receiving quite as much emphasis as the rights of the individual, yet this change, radical in some instances, has not been reflected by corresponding changes in criminal procedure.

But we need not pause to appraise any suggested change either in civil or criminal practice. What is needed is a scientific

and judicial analysis of alleged defects in our form of practice, both civil and criminal, consideration of their historical reason for existence, thorough investigation of the experience in other jurisdictions with any proposed changes, and a suiting of the remedies to the needs existing. The haphazard amendment of statutes and instruction by laymen and pseudo-lawyers to the courts as to how they shall perform their duties, has proved fruitless of everything except confusion and the addition of impediments to the prompt and efficacious administration of justice.

The shaping of the law and the means of its administration is a function of the expert. We have too long left it in the hands of the novice. When there is within the profession a readiness, if aroused, to deal with the law as the profoundest of the sciences and a sincere desire to have it administered and applied to human affairs with the greatest conceivable efficiency. We may expect a deeper regard for the legal expert and his recommendations. But if the profession concerns itself chiefly with a use of the law and its processes as a means of making a livelihood and with an adherence to precedent because it is that and because it involves less effort than the application of legal principles in the light of advancing knowledge, we need not expect much faith in the calling nor departure from the all too prevalent thought that since the law effects all citizens, any of them are qualified to help make it, or to pass judgment upon proposals for its change.

There is need of a body of judicial efficiency experts who can give precedence to the consideration of our own procedural problems, study the effectiveness of the administration of courts in this state and determine the respects in which it requires improvement and the means suited to the peculiar situation existing by which the needed improvement probably may be most successfully wrought.

It is sincerely hoped the committee of distinguished lawyers appointed to make a study of these questions has determined upon a workable plan by which the needed changes of the procedural law of this state may be accomplished by those who are experts, trained in the learning of the law and well prepared to deal with the problems which will confront them.

To a certain extent, I might say to a large extent, the success or failure in the administration of justice depends upon the judiciary and the public readily ascribes many apparent shortcomings to the courts. Much criticism to which they are subjected is unwarranted but obviously there are respects in which their functioning can be improved. Take, for instance, the executive side to judicial administration which is commonly overlooked. In spite of limitations upon the judicial function the trial judge very often might dispatch business, discourage dilatory tactics which so frequently postpone the disposition of causes and bring reproach both to the bench and bar. We not infrequently find one judge who will keep his dockets clear and clean of cases, while another with no greater amount of business in his courts, keeps

his dockets cluttered with unfinished business. The one possesses executive ability and despite the drawbacks of procedural law speedily brings litigation to an end in his courts, the other for want of executive ability and industry is lost in the maze and tangle of inadequate and inefficient procedural machinery. No matter how nearly perfect the procedure prescribed it will be powerless to remedy defects unless effectively used. Slipshod methods are just as disastrous in transacting judicial business as they are in the domain of commerce.

Then too, the quality of the justice administered depends somewhat upon the capacity, integrity, and judicial attitude of those holding judicial office. Adequate salaries, reasonably certain tenure of office, and removal of the office from the temptation of politics, are conducive to the development of general fitness for the position. No doubt the success of the English and our own federal courts may be traced as much to the stability and authority and dignity of the judicial office in these jurisdictions as to any differences in the procedure. If I am correct in this, the increase in judicial terms and salaries and the bringing about of other conditions which will contribute to judicial poise are essential to a greater administrative efficiency in the courts.

While the increasing trial of civil cases at law without the aid of the jury in many jurisdictions is proving economical and satisfactory, and will no doubt gain favor, a survey of this character cannot disregard the jury as an indispensable part of the trial court system. An institution so thoroughly ingrafted in our jurisprudence as the trial jury will long be cherished as a safeguard of individual and property rights.

But in the interests of a better administration of the law it may well be questioned if there should not be qualifications of some character except citizenship for jury service. The criticisms of the jury system would be minimized if our resourcefulness were applied to making it function more effectively.

I think we may well question the efficiency of jury trials in several groups of cases, especially where citizenship is almost alone the basis for it. Take that large and increasing class of cases where the plea is insanity—here certainly experts are needed. The ordinary layman is lost in the haze created by the evidence given by learned psychiatrists for defendant and plaintiff. In any given group of cases where the witnesses called are highly trained and educated experts, the use of technical terms necessary to make clear the intricacies of the subject matter of the case might well confuse any layman sitting as a juror. It will not answer to say the court can make the matter clear and guide the jury through the maze by instructions. It is usually the case the instructions but tend to greater confusion on the part of the jury, if they seek to unravel and understand them. The appellate courts themselves are not always equal to the task. We should come to recognize it as fact that the ordinary layman, brought from the counting house, the field, the shop, and the ordinary

avocations of life are not by some legerdemain endowed with the prescience of supermen because they have been sworn and accepted on a petit jury panel. They do remain but ordinary mortals.

But inseparable from the place of the courts in giving effect to the law is the part played by the legal profession. What the practicing lawyer often forgets is that it is his function to aid and not to hinder the courts; that in theory his objective is to secure justice for his client, and not victory at any price and that when he yields to the seductive spell of the lucre offered for advantage without regard to honor he prostitutes the profession which his life and service should exalt.

I realize fully perfection is not to be expected in those of our calling any more than those engaged in any other pursuit, the trend, a rising tide, I might say, in the most progressive states of the union is in favor of a raising of the general level of the profession. For many years, it is no new thing, there has been a movement in the direction of more thorough qualifications for admission to the bar. All professional schools have raised their pre-legal requirements and have increased the length of the professional courses. The standard prescribed by the American Bar Association as reasonable and desirable has now been adopted in many states.

While in this state it has not yet seemed wise to adopt such standard, the general raising of requirements in the schools and elsewhere abundantly reflects itself in the constantly improving character of candidates for admission to our bar. We are the beneficiaries of the steady change in the general situation and no doubt it will soon seem advisable to prescribe the higher standard.

While there always are exceptions to what seem unvarying rules, the general education of a practitioner may reasonably be expected to bear a definite relation to the character of the service he will render to society as one of those responsible for the administration of justice. The more readily the lawyer can perceive the significance of the social and economic movements of his time, the more helpful he can be in giving the basic principles of the law new vigor and meaning by their adaptation to what has hitherto been foreign to the law. The broadening vision of the profession to which reference has already been made is a distinct advance. The very cause of our common criticism has been the general belief that lawyers have their faces to the past. With the growing view that the law is in a state of constant flux, there is developing a more constructive profession.

Out of all the welter of agitation for improvement, the study of conditions, the plans for restatement of the law and other reforms, and the higher level of the profession, there is bound to come a more effective and satisfying administration of the law. But as members of the bar we cannot sit complacently by and expect the evolution of greater efficiency unless we ourselves contribute to the evolving process by our individual and collective efforts to improve the existing order. We may expect to find

among our members those who cling to the old order. It has always been so in all progressive movements in history. The end sought is neither novel nor unreasonable, but is the natural and inevitable result of the growth of ideas that is surely and certainly taking place in the minds of juridical students and thinkers.

SOME RECOMMENDATIONS

Gentlemen of the Association, I believe we have reached a point in the history of our organization where there is need for a reorganization. It is therefore with a certain degree of hesitancy and timidity I approach the subject and venture to call your attention to some changes which I believe, after a most careful study of the subject, should be made in the organization of the Association and the plans by which it accomplishes its work. In directing your attention to these matters, I am prompted by an earnest desire to see the work of the Association more efficient to the end that the profession, the judiciary, and the public may reap a resulting benefit.

Upon making an extensive survey of what is being accomplished by Bar Associations of other states, I find within the last few years the constitutions and by-laws of every State Bar Association has in some measure been worked over and revised, or is now in the hands of committees charged with the duty of reframing them.

The changes being made by the Bar Associations throughout the country are but the manifestation of the growth and development of new ideas which are taking place in the minds of the lawyers of this country. We hear it stated on every hand, by the leaders of the bar, that the law and legal thought is in a condition of such change, as possibly never known before. If we are to successfully meet, deal with, and properly direct the new conditions with which we are confronted, it is necessary for us, as a bar to reorganize in the most efficient manner possible.

In reply to many letters recently written, I learn at this very time bar committees in a number of states are making a serious study of plans for a contemplated reorganization of their Associations. The prevailing opinion, as reflected in these reports, is that the bar organizations should be so constituted as to place the bar in a position of such leadership in the state that it will both attract the attention and command the respect of the public.

Will our Association as organized today perform that service for the bar which conditions demand? Will it be able to keep abreast with what is being accomplished by like organizations in other states?

I feel we need to grow away from the old idea which has prevailed in the minds of many of us, that the purpose and motive of the bar organization has no higher objective than to furnish a friendly and pleasurable gathering of those engaged in the same profession. The time has arrived when the purpose

and motive of such an organization should be to set up great objectives to be attained for the good of the judiciary and the public, as well as, the profession. It should be our purpose to give the bar such a commanding position of leadership in the state that when the organization speaks it will carry with it influences and power. A leadership that will give it such power in the halls of the legislature, that it can bring about the enactment of laws which it deems for the public good and for the best administration of justice in the courts of the state. All laws should be the product of the best thought of the whole bar of the state.

Does the present organization make for leadership of this kind? Does it mold and influence public opinion as to what laws should be enacted for the public good? Bar organizations of other states, if they do not now occupy such positions of leadership, are overhauling the plan of their organizations in order that they may assume such positions. The trouble in our state, as I see it, is (a) the bar, as a whole, is not keenly alive to and conscious of the fact it owes a duty of service and leadership to the public along the lines mentioned; (b) the organization enters into its work with no marked degree of seriousness of purpose and with necessary objectives to be attained; (c) the organization reaches but a small percentage of the lawyers in the state—hence does not have behind it the full force of the power of a united bar.

Is it possible to remedy the situation? The above conditions have been and are being met and overcome in other jurisdictions. This I believe to be a sufficient answer to the question. To the end that we as a bar may attain the natural power and influence to which we are justly entitled, I suggest and most earnestly urge upon the Association the appointment of a special committee to be composed of thoughtful and eminent lawyers of this Association authorized to make a careful and comprehensive study of the questions mentioned and submit a report to the Association at its meeting in 1931, embodying their opinion of what will most nearly effectuate the desired end.

I call attention of the bar to what is known as the inclusive or unified bar act plan which has been adopted by several states, namely, Alabama, Georgia, Idaho, Oklahoma, California, North Dakota, and possibly other states. These acts make all of the lawyers of the state members of the bar association. This does not mean every lawyer must be an active member of the association. The plan provides for active and non-active members, but does provide all must be amenable to the discipline of the association. I find upon correspondence with the Presidents of these various Associations that they are gratified with the results obtained by a unified bar.

The California Bar Association president says, "We may not like to admit it, but the fact remains, that through various causes, among which might be mentioned low professional standards, commercialism, unethical conduct, inadequate prelegal require-

ments, in some instances incompetency and dishonesty, the bar had fallen in public esteem and confidence. In order to remedy this situation the idea of a self-governing bar was given a practical application in the adoption of the State Bar Act, which places where it belongs, the duty and responsibility upon the bar of keeping itself clean and restoring itself to the respect which belongs to a profession dedicated to man's highest mission on earth, the administration of justice." Speaking of the disciplinary future of the bar's work under the inclusive act, the writer says, "The congested disciplinary calendar is gradually being cleared. There is a marked decrease in new complaints, the time is approaching when disciplinary matters will occupy a secondary place in the activities of the Board. It will then be able primarily to direct its thoughts to aid in the advance of the science of jurisprudence, and the improvement of the administration of justice. The State may well be proud of the improved tone of the bar, the Bar Act has become not merely an ideal but a living practical reality, whose existence is consecrated to the uplift of the legal profession, whose aims are to restore the bar to its former high state and whose ambition is to assist in the administration of justice."

Another president says, "Most of the voluntary state bar associations lack money to prosecute their work effectively. They would, in nearly every state, receive a great deal more if they could increase their memberships to include all worthy practitioners. And if they received also the financial support of the unworthy ones they would have the means, as well as the inclination, to make the unworthy ones change their habits or exclude them from the practice. The result of the bar act has been increased energy and power, increased revenues, larger attendance at meetings and larger public influence."

Still another says: "I attended the annual meeting of the Association. The attendance was impressive. It indicated the Association had grown greatly in the esteem of its members and the annual meeting was looked forward to with interest."

The President of the Idaho Bar Association says, "The organization of the bar was opposed by most of the attorneys of the state at first, but now has come into favor, and generally the attorneys feel that it has resulted in increasing the respect and confidence of the public for the bar—it certainly has increased the power of the bar, and it speaks with authority now. In years past the recommendations to the State Legislature by the Bar Association were of no particular importance—now they are really of great weight."

The State of Washington has what is known as the Affiliation plan which the President of that Association writes me has practically doubled the membership of his Association.

I hold no brief for, nor am I advocating any particular plan of organization but I do see in the plans of the unified bar many things to be recommended. I therefore most earnestly urge the Association to make a serious study of the questions presented in

order that we as a State Bar Association may be able, as we justly should, to command the public esteem to which our great profession is entitled; may be able to exert a well defined and recognized power in shaping the destinies of our beloved state through the enactment of all proper, necessary, and wholesome laws.

In my own view, the lawyer has no excuse for existence but by that of service. Unless we strive sincerely, honestly, and earnestly to bring about speedy justice between man and man, we are false to the high trust reposed in us. We should be leaders, not followers, in every movement for the public good, and particularly should we be leaders in movements for reforms within our own sphere. I desire to see the day when our annual meeting will be regarded as a combination of (1) a company of legal students who are eager to learn from one another and from every available agency; (2) a meeting of stockholders in an important corporation who seek to share the discussion of all its projects, and participate in its profits; and (3) a fraternity of high-minded brethren who are appreciative of the social and friendly intercourse afforded by the Association.

The learning and accumulated experience of centuries are behind us. Let those who follow us be able to say, you have fought the good fight, you have kept the faith.

T. C. KIMBROUGH.

BY JUDGE D. M. RUSSELL: Mr. President, I have an impression, shared I believe by every member of this Association present, that we should not pass from the consideration of this excellent address by our President without pausing to give a few moments consideration to one of the high points in this great constructive message. I have particular reference to the recommendation of our President that this Association take proper steps toward effecting the re-organization recommended in this message in order, as the President observes, that this Association may take its position with the Associations of our sister states in becoming more effective in the functions which it ought to perform. I, therefore, move you, Mr. President, that a committee of five be appointed to study this question seriously, to report at the next annual meeting of this Association, and that in the meantime this committee shall give us the benefit of a preliminary survey in the next number of the Law Journal, so the members of the Bar may have an opportunity to study it during the ensuing year.

BY MR. HEIDELBERG: Mr. President, I want to amend that by providing that the President be made a member of that committee.

BY JUDGE D. M. RUSSELL: I will be glad to accept the amendment.

BY MR. W. A. ELLIS: I second the motion.

BY THE PRESIDENT: Gentlemen, you have heard the motion and the second. Is there any discussion? All those who are in favor of the motion will let it be known by saying Aye; those opposed No. The motion is carried.

I believe the next item on our program is the report of the Secretary.

The Secretary read the following report:

ANNUAL REPORT OF SECRETARY-TREASURER, 1930 MEETING

To the Mississippi State Bar Association:

Your Secretary-Treasurer begs to submit the following report:

RECEIPTS

Dues collected since last report	$1,350.00
Balance cash on hand for 1929 report	1,697.65
Total	$3,047.65

DISBURSEMENTS

Josiah Marvel (principal speaker at Clarksdale)	$ 140.00
Long distance telephone calls and telegrams	1.60
Hederman Bros., envelopes	5.50
Miss Mai Whitehead	4.00
W. S. Welch	11.12
Geo. W. Currie, telephone calls	1.85
Tucker Printing House, envelopes and programs	27.60
Louis M. Jiggitts, semi-annual salary	150.00
Striet & Smith, reporting Clarksdale meeting	215.60
W. C. Sweat, expenses in B. F. Bell disbarment proceeding	251.89
Geo. W. Currie, for telephone and telegrams	12.79
Mississippi Law Journal, Hugh N. Clayton, business manager	800.00
Better Printing Co., letter heads	7.25
To cash, for stamps	5.00
Better Printing, Inc., memorial program	8.90
Miss Mai Whitehead, multigraphing letter	3.00
Louis M. Jiggitts, semi-annual salary as secretary-treasurer	150.00
Cash, stamps	10.00
Miss Mai Whitehead, for multigraphing letter	4.00
Tucker Printing House, membership cards	8.50
Royal Indemnity Co., Ross & Yerger, bond	10.00
Better Printing, Inc., application blanks	4.50
Cash for stamps	12.00
Bank exchange	1.13
Balance on hand (as of April 28, 1930)	1,201.42
Total	$3,047.65

I, Louis M. Jiggitts, Secretary-Treasurer, do hereby certify that the above report is true and correct.

Witness my signature, this the 30th day of April, 1930.

LOUIS M. JIGGITTS,
Secretary-Treasurer.

Approved:
T. C. KIMBROUGH, President.

BY THE PRESIDENT: Gentlemen of the Association, I notice that our speaker for the occasion is in the hall at this time. His address will be at two o'clock this afternoon, but I feel sure all of us would like to see him, and I am going

to ask now that Mr. Jacobson and Judge Anderson and Mr. Gardner escort Henry Upton Sims, President of the American Bar Association, to the front, so the Association may see him.

Mr. Sims was here escorted to the front of the hall.

BY MR. HENRY UPTON SIMS: It ought not to be necessary, gentlemen, for a Mississippian to be identified to Mississippians. If I can say anything this afternoon as characteristically high of Mississippians' ideals as your President's address, I will be very happy. (Applause.)

The Secretary here read the following telegram from Hon. A. T. Stovall:

April 30, 10:39 a. m., 1930.

Hon. T. C. Kimbrough, President,
Mississippi State Bar Association,
Hotel Buena Vista, Biloxi, Miss.

Congratulations and best wishes for a most pleasant and successful meeting. Regret my inability to attend. Sincerely,

A. T. STOVALL.

BY THE PRESIDENT: Are there any matters of business which will take a few minutes? We have a few minutes we can devote to some matter. If there is nothing that the Association wishes to take up at this time, a motion to adjourn until two o'clock will be in order.

BY MR. JACOBSON: Mr. President, I move we now adjourn to meet again at two o'clock.

BY MR. SHOTTS: I second the motion.

BY THE PRESIDENT: There is a motion, duly seconded, that we adjourn until two o'clock. All in favor of the motion will say Aye; those opposed No. The motion is carried and we stand adjourned.

Afternoon Session

The Association was called to order by the President at two o'clock p. m.

BY THE PRESIDENT: Gentlemen of the Mississippi State Bar Association, the hour has arrived for the principal address of the occasion. We have with us a most distinguished visitor, who will deliver the annual address on this occasion, in the person of the President of the American Bar Association. I will ask Mr. W. H. Watkins, of the Jackson Bar, to present the speaker.

BY MR. W. H. WATKINS: Mr. President, Gentlemen of the Mississippi State Bar Association, Ladies and Gentlemen: We have as our speaker this afternoon Mr. Henry Upton Sims, of the Birmingham Bar. An Englishman by the

name of Lewis wrote a book which he called "The Geography of Distinguished Men." He said it was a mistake in allocating great men geographically to assign them to the place where they wrought and achieved, but that he had to go back to the place from which they originated. If that principle is a correct one—and I will not take issue—I would introduce our distinguished speaker this afternoon as being from Columbus, Mississippi. (Applause.)

The mother and father of our speaker came to Mississippi in 1850. His father became an illustrious member of the Mississippi Bar. At the outbreak of the War in 1861, he joined the army and became a Colonel in the Confederate Army. He achieved distinction at the Bar and in every walk of life, and in 1876 he was a member of that memorable State Senate, that period which tried men's souls. Governor Stone was elected President Pro Tem of the Senate; the negro Lieutenant Governor was impeached, and thereby Governor Stone became Lieutenant Governor and Colonel William H. Sims, the father of our speaker, was elected President Pro Tem of the Senate, and when Ames, the reconstruction Governor, resigned, Governor Stone became Governor of the State and Colonel Sims became our Lieutenant Governor, and served throughout the remaining term. I went to an older member of our Jackson Bar the other day, knowing I would have the pleasure of introducing our speaker, and asked him about Colonel Sims. He summed it up in this way—and I thought of these troubled times we are going through in Mississippi—he said: As a lawyer, as a Senator, as President Pro Tem of the Senate, and as Lieutenant Governor, he put the honor of Mississippi above everything. (Applause.)

In his early days, our speaker moved with his father to the State of Alabama. Mississippi, however, in giving him to Alabama was but paying back part of that obligation of the State of Mississippi to the other states for that noble and rich stream of humanity which poured in and formed our citizenship.

Mr. Sims became a distinguished member of the Birmingham Bar, a lawyer enjoying a large practice. In the meantime, he has been very active in the work of the American Bar Association. He served as a member of the General Council, and as a member of the Executive Committee. The time approached when, according to the rules of the American Bar Association, the South was entitled to the presidency again. Mr. Sims, being a good Presbyterian elder, never bothered himself; he always believed that which ought

to happen would happen. On account, however, of his distinguished service to the American Bar Association it was apparent, and has been for several years, that he would become its President, and when the time came for the South to have this honor again, the name of nobody else was written; with one voice they elected our speaker. I have the honor of presenting to you the Honorable Henry Upton Sims. (Applause.)

HON. HENRY UPTON SIMS: Thank you, Mr. Watkins, for your very kind words. Mr. President, My Fellow Citizens: I do not know that any greater honor can come to a man than to have the State of his birth claim him as a citizen still; and certainly no greater pleasure could come to me in the office that Mr. Watkins and other Mississippians were so good to procure for me, than to feel that I am a representative of the part of the State in which my father took such strenuous efforts to re-establish nearly sixty years ago. Of course, I prize my citizenship in Alabama, I prize above honors in every other State the privilege of coming to the State of my birth, as being thought not unworthy to talk to the Bar and my associates of the Bar in the American Bar Association.

PROBLEMS TO BE SOLVED IN UNDERTAKING THE REFORMATION OF THE LAW

Before entering upon a discussion of the possible methods of reforming the law, even before considering the need for the law to be reformed, it is necessary to find some body of the citizenship who is willing to assume the responsibility of critics and investigators of the law, and in the event that reformation of the law is found to be desirable, then who is willing to assume the more important responsibility of suggesting and procuring its reformation.

The theme of my addresses during the first few months of my term as your President, was that the duty to assume all this responsibility lies upon the Bar. Of course every reform which the common law has experienced since it was transplanted into America, has been accomplished through the direct agency of lawyers, either as judges or legislators, or text writers and commentators. But they have accomplished it in the main as individuals, or as groups of individuals, rather than as representatives of the Bar. The time has now come, however, when the supervision of the administration of justice in all its phases should be made the charge of the organized Bar. Though the legislature must do that part of the reforming the accomplishment of which requires legislation, they must be taught to rely upon the suggestions and the guidance of the organized Bar. And though the courts must do

that part of the reforming the accomplishment of which requires the exercise of the judicial function, even the courts must be advised in their functioning by the organized Bar. That is to say, this investigation and advice for legislatures and courts, if the reform is to be accomplished systematically, must be provided systematically by the organized Bar.

Such is my vision for the Bar's future usefulness; and every lawyer who has engaged in efforts individually or with other lawyers, to accomplish specific reforms, well knows that if the Bar will unite in proclaiming their assumption of the general burden, and will conscientiously work to carry it on until the public realizes the sincerity of the Bar's determination there will not be much difficulty in getting recognition from the legislatures and the courts of their right to supervise. The failure of various measures recommended by bar associations in the past, has not been due as is sometimes asserted to the fact that those reform measures were recommended by the bar associations, but rather to the fact that the bar associations too rarely truly represented the bar.

This duty of the organized Bar to assume responsibility for the administration of justice as I say has been the subject of my earlier addresses; and reference is made to it here merely by way of introduction and by way of explanation for entering into a discussion of further steps in the reform of the law before an association of lawyers, instead of merely writing a book to be read by whomever it may concern. Let us assume then that the organized Bar may become inspired to realize the possible field of usefulness open to the profession and that it is therefore appropriate to proceed at once to a consideration of the problems to be solved in undertaking the reform of the law.

First comes the problem of testing the law to determine its sufficiency to meet the demands of society for the maintenance of order; the question whether the law needs reforming in whole or in part. Throughout history this question has usually been settled in three ways, by the clamor of the public, by the mature opinion merely of students and experts in the practice of the laws already existing, or by investigation and comparison of other bodies of law. Each of these methods of testing has to its credit many of the most important reforms effected in your Mississippi law since the earliest days of your law's separate organization; as a few instances will suffice to prove. Your workingmen's compensation law and your child labor laws were the result primarily of social pressure. Your real property law provisions and the limitations on your court jurisdictions have nearly always been based upon mere expert opinion. And your married women's law, giving married women substantial equality in property rights with men, the first of such laws, by the way, to be enacted in any state under the common law, was inspired, so your historian Claiborne says, by observation of the similar law of the Choctaw Indians. Nor has such deliberate adoption of the laws of strangers

been unusual in the sweep of general history. Professor Muirhead says that the laws of the Twelve Tables of Rome evidently contained verbatim adoptions from the laws of Solon. The Napoleonic Code of France, is in many places a mere translation of the Code of Justinian. And most of the later members of the United States have enacted as their first statutes section after section and even chapters of the statutes of older states whose laws were easily obtained and subjected to examination.

These adoptions of foreign law have sometimes come about as the result of experienced opinion that a change from existing law was needed, and the particular foreign law might well be selected as a remedy for the trouble. But such adoptions have often been made also as the result of mere constructive search on the part of committees of authoritative observers, seeking to improve their own legal conditions; just as nations send military observers to the maneuvers of foreign armies, and manufacturers send students to learn the processes of manufacture in other lands.

This comparison with other law is an excellent test of legal sufficiency. But by far the greatest credit must be given to expert opinion; for most of the faults in our own laws have been discovered by those practitioners of broad personal experience, who have sought to protect those following them from suffering the injustices in law or pleading which earlier experience revealed.

Latterly, however, a new plan is being urged to test the sufficiency of the law. It is most conspicuously the plan of the Johns Hopkins Institute recently organized at Baltimore. More and more is being said in the last few years by critics of social conditions in condemning the administration of justice in nearly all the states. And when many of the criticisms have been carefully analyzed, it has become evident that very little accurate data is available to show conclusively whether existing legal devices were working effectively or not. After all is said, it has been primarily the mere opinion of the critics—largely lay critics, by the way—that the administration of justice can be materially improved. So the plan of the Hopkins Institute is to go to the fountain head for facts, and to collect data on the reasons of the litigants for instituting law suits, on the efforts made beforehand at adjustment, on the types of actions selected by counsel, on the type of courts in which the actions were brought, on the hitches encountered during the proceedings and in the trial, on the effectiveness of the outcome. Thousands of cases are to be investigated in a given jurisdiction; and the information gained is to be tabulated by careful students before a conclusion is to be reached as to the adaptability of the action or the procedure or the court structure or the other various legal processes intervening between the disagreement of parties and the final determination of the claim. But when a series of conclusions shall have been so reached, it is believed that social investigators will know what is the value of the administration of justice in the given jurisdiction and on the given subject of laws.

Of course the value of this method is unquestionable. But the time involved will be interminable. So after all, except in rare instances where experienced opinion is greatly divided, it would seem that would be reformers will have to rely primarily upon the old methods to determine the need of reform.

Suffice it to say then that mature experience, great caution, and the comparison of other systems of rights and remedies will always be the methods which reformers will mainly rely upon to determine whether justice is being effectively administered in the community. Some of the states have recently thought it worth while to go to the expense of conducting complete surveys of the existing administration of certain branches of the law—generally the criminal laws of the state. And while these surveys contain considerable data collected in general similarity to the Hopkins plan, they are chiefly tabulations of careful observations and opinions upon the functioning of legal institutions, and are more valuable as careful opinions than as collections of ultimate data.

But by whatever methods the test of the law is made, if it be established to the satisfaction of the bar that the law or its administration is in need of reform, either in important parts, or substantially as a whole, the next question arises how the reform or reforms may be best accomplished. If the reform is to be partial only, or is to be attempted only in definite fields, there is presented either judicial or statutory modification, and sometimes the one is more easily obtained and sometimes the other. Those of you who have read Chief Justice Cardozo's essays on the judicial process of reforming the law, know how a great judge acting conscientiously can accomplish important changes in either substantive or adjective law not only with the approval of both professional and lay opinion, but even in response to the social urge. It is a great mistake to deny that the courts make the law. The law is never extended to a varying set of facts without becoming changed in its material substance. The creation is only noticed when there is a complete metamorphosis. Therefore the doubt of the wisdom of the process arises only with regard to the degree of change desired at the time. The judicial process works by erosion in the main, as Judge Cardozo says, whereas statutory modification accomplishes sudden reforms. The history of the Common Law abounds with examples of both. The development of the law of trusts, the incorporation into the law of the customs of merchants relating to negotiable paper, the rule against perpetuities, and the fellow servant and vice principal doctrines, are all examples of judge-made changes in the substantive law. While the abolition of feudal estates, the enlargement of the rights of married women, the adoption of workmen's compensation, and the invention of homestead exemptions are notable examples of changes in the law too great to have been accomplished by judicial authority alone. A change made in the law, whether accomplished by the judicial process or by the statutory method should be in fulfillment of a discernible need; other-

wise it will probably be unsuccessful. The difference is this. A change made by judicial process is usually made in response to a social urge, it may even be an unconscious urge; whereas a change by statutory modification is made oftenest under a definite demand. The urge may be a mere development of the moral impulse; and the demand may be a mere temporary fad. But to the eye of the student, especially on looking back upon them, they are discernible nevertheless. Therefore if the reason for their having been made can be discerned by the student at any time, the need for the change can be seen, though much less clearly before the change is made, instead of afterwards.

The great jurist is he who sees the need for changes in the law with a clarity of vision based on devotion to his country's good, and a thoroughness of scholarship based on hours of honest toil. And it is the lesser changes in the law which keep the body of law alive and consonant with social requirements. If the law were watched faithfully and all the time by students ambitious for its good the number of great changes to be made in it would be few indeed. Multitudes of little changes would render unnecessary many big ones. And the little changes can be made by means of the judicial process without being generally observed, and therefore without objection.

The doctrine of stare decisis if applied strictly, would be the death of the law. In the first place, it is impossible except where recurring sets of facts are the same. In the second place it is misleading, because it assumes that recurring sets of facts merely similar in the broadest view admit of the application of the formerly announced principle. So that the doctrine not infrequently results in carrying a principle further and further from its moorings. And if the principle was inaccurately stated at first (which is of course always possible) then it results in reiterating bad law.

Of course it is desirable that the law should be as certain as practicable. And if the social fabric and human nature admitted of the law remaining unaltered until by common consent it should be altered knowingly, so that at any time an educated lawyer could state confidently what the law is on any group of facts, the facts being definitely established, the situation would be ideal. But the nature of man and the nature of our legal system forbid it. The mental operations of no two judges are alike; they will often state an admitted principle of law differently. And as groups of facts recur, no two courts will even apply the principle to the facts in exactly the same way, even if we assume that the groups of facts contain no differentiating additions.

I say that our present system of law forbids it, because under the present conception of the common law, of which the doctrine of stare decisis is a corallary, every decision of a court of last authority is the law in the jurisdiction and is binding in similar cases until the court or the legislature shall have changed it. In jurisdictions of the Civil Law, such is not necessarily the case,

however, because decisions of the courts have less authority under that system. We can never therefore get away entirely from changes in the law by application of the judicial process.

We have been considering so far methods of making merely partial changes in the law, and in the main only small partial changes at that. But occasionally in the history of every country's law it becomes necessary, or it is believed to be necessary, to make great or revolutionary changes in the law, in order to bring the law up to the needs of society. As explained in the apology for the initiation of a department of research in the Law School of Harvard University a few years ago, the social development of a nation sometimes outruns its law, even though the growth of the law may have been carefully watched. And then the law has to be brought up at once, too rapidly for it to be accomplished by either the judicial process or fractional statutory amendment. This occurred several times in the history of Roman law, the last instance being the Code of Justinian. It occurred in the history of French law when the Code Napoleon was compiled. It occurred in the history of Germany when the Imperial German Code was promulgated in 1897. And it has occurred twice recently in the law of England, when the Judicature Acts were adopted, and the court rules of procedure were made during the period beginning in 1873 and ending in 1883, and again when the Law of Property Acts were adopted in 1922 and 1925. These English changes were not as broad in scope as were the Codes in Rome, France, and Germany; but they were more revolutionary perhaps, and farther reaching.

It is generally believed that such an occasion for material change has come in nearly if not all the United States; and the question is how to accomplish it. One method, the one meeting the approval of most of the scholars in America, is the plan of the American Law Institute. It is to employ the most competent scholars in the several branches of the law, to restate the law of this country in didactic form. Where the law is divergent the law is being restated in the form believed to be most in keeping with modern requirements; and where the law is uniform now but merely confused it is being restated as concisely as is practicable.

The strength of this plan is that careful study is revealing the tendencies of social pressure for reform; so that the restatement when finished should point the way in which future changes of the law ought to go. It is therefore a highly developed adaptation of the judicial process. And as it is not statutory in its authority, but must be voluntarily followed by the courts, it can be safely relied on by the bench and bar and society in general as a new platform from which to continue to build up the law. It will clear complexity and confusion in the law as the law is today.

But its infirmity, if it has any, is that it cannot change the law where the changes which should be made are so great as to be beyond accomplishment by the judicial process. To that extent the restatement will be merely advisory. The law must be re-

formed by statute; and intelligent committees of the Bar, including the judges in the several states must continue their observation and research to tell what sort of reforms and how extensive reforms the law requires.

The work of the Institute is necessary for that too; for without it the Bars in the several states would have to expend the preliminary labor to find what the law is, and which way it is tending in order to properly advise the legislatures what sort of reforms to make. But the real reforms must be made by statutes, elaborate statutes in the nature of codes, if we include in the meaning of the word "code," changes in the law to make it, or such parts of it as are covered, systematized comprehensive wholes.

So much for the methods of testing and the methods of reforming the law. One thing is now evident to those who have not thought fully on the whole subject before. And that is that however similar in most branches the law throughout the country may be, in many branches the law of the several states is not uniform at all, and the needs of society are not to any degree similar. Reform of the law is therefore a local question which must be solved in each general locality by the local bar for itself. The mystery must be cleared away, and the hope abandoned that outside scholars and students, and commissions and institutes can do the work satisfactorily for us all. Let us all therefore organize our respective State Bar Associations to cope with the problem and proceed systematically on the work.

HENRY UPTON SIMS.

BY THE PRESIDENT: I am sure that every member of this Association highly appreciates this splendid address that the President of our American Bar Association has made here today. We thank you, Sir, for these fine suggestions.

The next matter that comes before the Association is the report of the Special Committee to make a survey and study of the Administration of Justice by the Courts of Mississippi, Judge W. W. Venable, Chairman.

REPORT OF THE SPECIAL COMMITTEE TO MAKE A SURVEY AND STUDY OF THE ADMINISTRATION OF JUSTICE BY THE COURTS OF MISSISSIPPI.

Mr. President and Gentlemen of the Mississippi State Bar Association:

Your committee appointed a year ago to study the advisability of urging the legislature to establish a Judicial Council and to provide for the invoking of the rule-making power in the realm of pleading, practice and procedure in the courts, having completed its labors, begs leave to report.

We have pursued our investigation and study of the subject with what diligence was possible and have reached the following conclusions and make the following recommendations:

I.

That a Judicial Council be established by the legislature for the continuous study of the problem of the promotion of justice in our courts.

II.

That this Council shall have delegated to it by the legislature the power to enact rules governing pleading, practice and procedure in all of our nisi prius courts, such rules to have the force and effect of statutes, existing statutes to remain in force until superceded by applicable rule or rules; such changes to be made in the rules from time to time by the Council as it shall deem wise.

III.

That short practice acts be passed by the legislature providing for fundamentals and general outline, leaving the details and the substantial body of the rules of pleading, practice and procedure to be prescribed by rules, as aforesaid.

IV.

That this Council shall be composed of representatives of each department of court practice, and of each kind of court in the state, except that of Justice of the Peace.

V.

That to effectuate this the Council should be composed as follows: Two Supreme Court justices to be selected by it; two chancellors; and two Circuit judges and two County judges to be selected by the chancellors, Circuit judges and County judges respectively; three practicing attorneys, two from each of the Supreme Court districts of the state, three of whom shall be selected by the State Bar Association and three by the Governor, the State Bar Association and Governor appointing one from each Supreme Court district. These fourteen members when assembled are to select from the state at large a fifteenth member, being an active practitioner and one, if possible, whose work carries him into the several parts of the state and into all of its courts, he to serve as chairman of the Council.

VI.

That the necessary expenses of the members of the Council incurred in attendance upon its meetings be paid from the public treasury, and that a secretary be appointed—and we suggest the Clerk of the Supreme Court—to gather data and information for the use of members of the Council.

VII.

The committee has reached the conclusion that there is no constitutional objection in such legislation.

We feel that it is well for us to state in this connection some of the reasons leading us to our conclusions.

We recognize that in an ideal judicial system all controversies

would be decided upon their merits, in the shortest time and with the least expense commensurate with this result. The supreme purpose of all judicial action is to discover the truth, apply the applicable, substantive law and render the judgment or the decree that it pronounces. Rules of pleading, practice and procedure are merely tools of the court and its officers for the accomplishment of this purpose. To the extent that these tools are not adapted to the work in hand, or to the extent that the judicial purpose is hindered in realization by defects in them, a judicial system is defective. In a very real sense whenever a cause is not decided on its actual merits there has been a miscarriage of justice. It is highly desirable that rules of substantive law remain certain and fixed because the actual rights of the citizen are defined by them. The same reasons do not apply to rules of pleading, practice and procedure. These should be subject to constant improvement and changes necessary to best adapt them to conditions which are constantly changing.

While it is undoubted that all courts possess the rule-making power, and in the absence of legislation could promulgate their own rules of pleading, practice and procedure in order to accomplish the purposes of their existence, the fact remains that in the American States, and formerly in England, this work was largely taken over by the legislature, resulting in a more or less non-adaptable system growing out of the fact that the legislatures of the several states are, as a rule, convened in short sessions with their time engrossed in questions of finance and the enactment of substantive laws; are composed largely of non-lawyers and with little time to make a concrete study of the courts and court procedure as an instrumentality of justice, and with no opportunity practically to pass particular legislation with the view of having it in harmony with the system as a whole. It has been found that a rule once enacted by the legislature is hard to change, so that if conditions change and the rule became a defective tool it is difficult to get a new one enacted or the old one modified as it should be.

Within recent years, stimulated by the leaders of the Bar and of legal thought in the United States and with the example of the English courts, there has been a growing consciousness that the moral and patriotic responsibility for the efficiency of the courts of the land rest primarily upon the judicial department of government, and not upon the legislative; that we, the lawyers and judges are directly responsible to the people, and are, because of our peculiar situation, best able to accomplish the work of making the courts speedy, efficient and inexpensive.

A vast literature has developed in law journals, periodicals, and elsewhere, on the question of the rule-making power and the need of invoking it. England since 1875 has controlled pleading, practice and procedure in her courts by rules promulgated by a commission composed of judges and practicing lawyers, and it appears in the literature on the subject that those who have

studied the English courts and observed their known efficiency attribute no small part of it to the fact that the courts, through this commission, composed of men best able to know conditions, have been enabled from time to time to adopt rules best adapted to the existing conditions and the work in hand.

It seems to be the general concensus of opinion of those who have studied the subject, that the best result can be obtained only by a constant study of the courts, their machinery and methods from the viewpoint of a particular rule without reference to a view of the whole field, which of necessity is more or less the legislative viewpoint in dealing with the specific legislation. It is also thought that the Legislature, by its inherent constitution, personnel and character of duties, engrossed with so many other important matters, is not best fitted for and cannot give the continuous study that this subject requires. Out of these considerations grew the movement for the establishment of judicial councils and the invoking of the rule-making power. At this time seventeen states have such councils, composed of lawyers and judges whose business it is to give continuous and painstaking study of the courts, their practice and procedure, and with power to make recommendations.

The movement is endorsed by the American Bar Association, is rapidly growing, and we think that we can confidently predict that within a very few years the majority of the states will have judicial councils, and that the legislatures of the remaining states will be persuaded as to the wisdom of this movement. It is true that in most of these states the councils have not as yet been granted rule-making power. In one or two of the states the end has been accomplished by the legislatures vesting in the Supreme Court the power to promulgate rules for all courts, the Supreme Court being advised and assisted by council composed of judges and lawyers.

We think that we can safely say that it appears to be the ultimate purpose to have councils vested with the rule-making power, and that the failure to give councils rule-making power in the states, where such is the case, is due either to the fact of some difficulty caused by some provision of the constitution of that state, or because it was deemed advisable, because of local conditions, to proceed, by degrees, towards the ultimate object.

Your committee, after considering conditions in Mississippi, is of the opinion that there is no reason why we should not ask the legislature, not alone to establish a Judicial Council, but also to vest in it rule-making power. We have had the good fortune to have on our committee Judge Griffith, Justice of the Supreme Court, and ex-Justice Stephens, who were able to give us some insight into the tremendous labors already necessary to be performed by the members of this court, and we do not think that it is just to them to impose upon the court as a whole additional tasks which will require considerable time if efficiently performed,

and which would have to be rendered from purely patriotic motives and without monitary compensation.

There is an additional reason of great force. Viewpoint has much to do with all human judgment. Many things which reason well and logically do not work out in actual practice, because it is impossible to put into the syllogism of our reasoning, what after all, is a large element, namely, human nature in its infinite variety.

The lawyer on the appellate, chancery, circuit, and county court bench, and the lawyer at the bar by virtue of their several positions view situations from different viewpoints. We thought it advisable to have the problems incident to the administration of justice in the courts to be considered from all possible viewpoints by men most familiar with them in actual experience and able to present them.

We have recommended short practice acts wherein the legislature would prescribe the outline and fundamental requisites, leaving the details and the general mass of rules of pleading, practice and procedure to be governed by the rules of the Council.

It is obvious also that if rules of Council are to be effective they must have the force and effect of statutes.

It is not thought that the Council would establish rules which would supercede existing statutes without a careful and thoughtful study so that the changes which would be made would not be too rapid, and of course the rules so promulgated would not go into effect until a reasonable length of time had elapsed and due publication of them had been made. Existing statutes would continue to operate until superceded by an applicable rule, and of course the legislature would have the power, if it saw fit, to exercise or abolish a particular rule by legislative enactment, although it is hoped that such power would not be exercised, it being assumed that the Council, if it were found in actual experience that a rule was not wise, would change it themselves.

It will be noticed that the committee has recommended that the Council be composed of judges representing all of our trial courts, except that of Justice of the Peace, together with representatives from the Supreme Court, and practicing attorneys. By this method all branches of the practice are represented, and it is thought that by this means the Council will be enabled to obtain all possible viewpoints.

No salary is provided for members of the Council. The members are supposed to carry on a continuous study, but meetings of the Council would not be necessary except a few times a year, the members being able to communicate by correspondence. It is thought, however, that a secretary should be provided, whose duties would largely be the gathering together of data, reports of Councils, gathering information as to the methods used in other states, and the experience of other states with particular expedience which had been tested, or were being tested, etc.

Reports on the subject show that those states which have Judicial Councils are having no difficulty in having the Council function because members are not paid. The thought has been advanced that the Council would not be efficient, for the reason that they are not receiving compensation, and for this reason would neglect their duties. We do not think this criticism is valid. Other states have not had this experience and we think that the lawyers and judges in Mississippi are equally patriotic. We have a large number of men of ability and learning at the bar who would gladly render this public service as their contribution to the welfare of their Commonwealth and for the benefit of humanity.

The committee is of the opinion, and in this it is unanimous, that there is no constitutional objection to the vesting of rule-making power in such Council, as has been recommended. The permissible length of this report will not permit an extensive brief on this phase of our work. Suffice it to say that our Supreme Court has recognized the validity of rules promulgated by a commission composed of chancellors and circuit judges, created by Section 2, Chapter 115, Laws of 1920. It will be seen that this commission was composed of judges and chancellors, wherein chancellors who are laymen in so far as the Circuit courts are concerned, and Circuit judges who are laymen in so far as Chancery courts are concerned, were authorized to make rules binding on courts with which they had no official connection. The power of the legislature to do this was discussed by our Supreme Court in the case of International Shoe Company v. Garfinkle, 146 Mississippi, Page 799. In this case the court pronounced and affirmed the power of the legislature to enact rules of pleading, practice and procedure by direct enactment, and speaking of the power of the legislature to delegate this legislative power to a commission the Court says:

> "Likewise the power of a rule-making commission for the courts, set up by the legislature for that purpose, is amply established by the authorities, the only limitation on such rule-making power is that the rules adopted by the commission must not run counter either to the organic law of the state, or to the pleading or practice statutes enacted by the legislature, and in addition, must be reasonable and just and calculated to facilitate the administration of justice in the court."

In the case of Railway Company v. Kirk, 102 Mississippi, page 41, the Supreme Court remarked:

> "This Court has no authority to prescribe rules for the government of trial courts and has never attempted to usurp such power."

This, however, appears to be dictim, but this case presents no difficulty, because undoubtedly the legislature would have the authority to give such power to the Supreme Court if it saw fit to do so. The power of the legislature to delegate such power to

the court of last resort has been expressly ruled upon in the State of Washington, in State v. Superior Court, Pacific Reporter, page 770.

Originally in England matters of pleading, practice and procedure were governed by rules promulgated by the highest courts. Conceding that the right to make rules of pleading, practice and procedure is legislative in character it seems to be pretty well settled that it is not of such nature as not to be delegable by the legislature, and for this the Garkinkle case would appear to be directly in point, this question being necessarily involved in the decision.

If, in the enabling act creating the Council, the legislature should provide that the rules promulgated by the Council should have the force of statutes, it seems to be reasonably clear that the courts could not ignore the rules as being unreasonable any more than it could ignore a statute for like cause.

An objection has been suggested that the courts reserve to themselves the right to ignore a rule of any particular matter they think works a hardship or injustice. It will be noticed that our recommendation is that the rules of the Council should have the force of statutes and no discretion will be vested in the court to enforce the rules or not as they see fit, any more than they would have the right to enforce a statute or not, as they saw fit.

A year or two ago this Association went on record as favoring legislation providing for a commission on law revision, this commission to receive a salary and to give a continuous study to the statutory law of the state, making its recommendations to the legislature. It has been suggested that instead of establishing a separate Judicial Council, such as is outlined in the report of this committee, it would be advisable to confer the duties herein proposed on the law revision committee, if and when created.

The majority of your committee is not in favor of this proposal. The idea behind the recommendation for a Judicial Council is that they shall study particularly the pleading, practice and procedure of our courts as instrumentalities for the attainment of justice. The law revision commission will have the study of the whole body of the statutory law, both substantive and adjective. We are of the opinion that the labors of the two commissions, if created, are different; their field, of course, is not the same, and that the greatest good will be accomplished by confining each to its proper work.

Another serious objection to this proposal is that it abandons altogether the fundamental object of the exercise of rule-making power, which is to get the making of rules away from legislative enactment, which is necessarily slow and more or less unscientific, into a body of men whom it is thought will become specialists in this field, and where the rule may be easily changed to meet constantly changing needs.

The commission on revision of the laws necessarily by virtue of their field of work, will make their recommendations to the legislature, and to have this body also act as a Judicial Council

means the abandonment of the idea of rule-making as a substitute for legislation.

In conclusion, we beg leave to say that the report of the committee is unanimous, with the exception of one distinguished member, Honorable John W. Dulaney, whom we understand will present his views in a minority report.

Respectfully submitted,

W. W. VENABLE, Chairman.

BY JUDGE W. W. VENABLE: I regret very much to say that Mr. Dulaney, because of professional engagements, could not be present. He sent me his report, which I take pleasure in reading at this time.

MINORITY REPORT OF HON. J. W. DULANEY.

To the President and Members of the Mississippi State Bar Association:

I regret that as the thirteenth member of your Special Committee, I unfortunately do not fully agree upon its recommendations.

The committee has recommended the establishment of a body which will be neither a court nor a legislature but which in the field of pleading, practice, and procedure, will in effect have the power to repeal statutes enacted by the legislature and enact others binding upon the courts. For a number of years this proposal has been made in the law journals and bar associations, but so far as I have been able to ascertain, no state has yet adopted it. Originally the power to regulate procedure was vested in the courts and it undoubtedly still rests there to the extent that it has not been modified by particular statutes. In several states a complete rule-making power has been vested in the Supreme Court, and in two of these there are advisory councils having the duty to draft and suggest rules for the approval of the court.

The right of the legislature to enact laws governing procedure has been recognized for so long a time and so universally that it is not now open to question, and it is equally well established that such statutes, unless clearly unreasonable, supercede court rules. In Wisconsin, the Supreme Court is given the power to promulgate rules which suspend statutes relating to pleading, practice and procedure and the legislature expressly retains the right to enact or repeal such statutes or rules. Even without such a provision, it is clear that if one legislature delegates this power to a court or commission, the next can assume it again at its pleasure or to such an extent as it may see fit. It could repeal or modify any rule that had been promulgated, so that in the end the judicial department would not greatly increase its independence, because only those rules would stand which a majority of the legislature were content to let stand. We are not without an illustration in Mississippi. Section 2 of Chapter 115 of the Laws of 1920 provided: "A Commission composed of the Chancellors and Circuit Judges is hereby created and charged with the duty

of formulating and promulgating and, as need may arise, from time to time, revising a Code of rules of practice and procedure in the Circuit and Chancery Courts." One of the rules adopted was with reference to examination of jurors by attorneys, and the Supreme Court in Williams vs. State upheld this rule. The rule was repealed by the legislature as soon as it convened again (Chapter 294, Laws of 1922) and at the same session by Chapter 159 the Commission was again created.

In view of the fact that the power cannot be permanently delegated, and further that there is no great assurance that we would be successful in having it even temporarily delegated, I believe that the better policy for the Association would be to continue its efforts for the establishment of the Permanent Commission on Law Revision. This move began with the introduction of a bill late in the 1928 session of the legislature. It met with considerable favor but was crowded out in the closing days of the session. It was endorsed by President Wilbourne in his address before the Association in 1928, and by President Currie in his address in 1929, by the Association in adopting the report of Judge Griffith at Gulfport and in adopting a similar report at Clarksdale. While nothing further has been done in the matter during the past year, pending the consideration of the proposal in regard to the rule-making power, it is to be hoped that the Association will continue its efforts in this connection for so long a time as may be necessary. We can scarcely hope to accomplish a great deal if we change objectives too frequently.

The delegation of the rule-making power is not necessarily involved in the establishment of a commission or judicial council. As already stated, seventeen states have the advisory councils without rule-making power. It was my privilege last October to attend a meeting of representatives of these councils. From the reports made, there can be no doubt that they are accomplishing much by recommending legislation and their effectiveness is increasing. The commission recommended by this Association at its last two meetings differs from most of those now existing in three respects; its membership is smaller, the members would receive substantial if not adequate compensation, and the commission would not only recommend changes in matters of procedure but would also have the duty to study all general statutes and point out defects and ambiguities, submitting drafts of needed revisions. There is need for continuous expert study of all general statutes, not merely of those relating to procedure. I think it unwise to seek the establishment of two commissions, and further, one could accomplish the work better, because substantive and procedural matters are often very closely interwoven. This commission might also have the further duty to draft and recommend to the courts, rules of practice supplementing statutes.

Not to prolong this report unduly, and with the greatest deference for the views of other members of the committee, I respectfully submit:

1. That as a whole, the system of procedure now existing in

Mississippi is a fairly good one and not so defective as to require the setting up of a new legislative institution.

2. That there should be continuous study and improvement of all general statutes and not merely of those relating to procedure.

3. That it is not advisable for us to endeavor to have the legislature create two separate commissions.

4. That the commission heretofore recommended by this Association can accomplish all that could be expected of the proposed rule-making body, and a great deal more.

5. That a small commission receiving proper compensation, with perhaps a larger honorary advisory body, will accomplish more than would the latter alone.

6. That even if we assume that the creation of the rule-making body is more desirable, the prospect of obtaining it is not so great as to justify us in substituting it for the proposed Commission on Law Revision which has already met with the approval of a great many members of the legislature.

Respectfully,

J. W. DULANEY.

BY JUDGE W. W. VENABLE: We submit this report, and I move its adoption, and that the committee be discharged.

BY HON. D. W. HEIDELBERG: I second the motion.

BY THE PRESIDENT: It has been moved and seconded that the report of the committee be adopted and the committee be discharged. Is there any discussion? All in favor of the motion will let it be known by saying Aye; those opposed No. The motion is carried.

Is there any other matter of business that ought to be brought before the Association? It has been suggested that we might have the last report of the Committee on Memorials and Obituaries, and if Mr. Yeager is present, we will ask that he present that report at this time.

REPORT OF COMMITTEE ON OBITUARIES AND MEMORIALS

To the Mississippi State Bar Association:

At the 1928 meeting of this Association the following resolution was adopted:

"Be it resolved by the Mississippi State Bar Association:

"That the Supreme Court of the State of Mississippi be petitioned and requested to set apart and designate the first day of its term beginning on the second Monday in September, in each year as a Memorial Day at which services in honor and memory of all members of the Bar of the State of Mississippi who may have died in the preceding year shall be held, such services to be conducted in accordance with the regulations of the Supreme Court, and under control of this Bar Association.

"Be it further resolved that the President of this Association appoint a committee of three to present the petition and request to the Supreme Court in order that such Memorial Day may be had at the September, 1928 term, if the Supreme Court should see proper to grant the request."

The Supreme Court acceded to the request of the Association and in September, 1928 an impressive memorial service was held.

When your present committee was appointed it was assumed that the Association desired to continue the custom thus inaugurated in 1928, so after consultation with the Chief Justice your committee arranged for the memorial service which was held Monday, September 9, 1929, on the convening of the Supreme Court.

In securing information as to deceased members of the Bar your committee was compelled to write approximately 125 letters. In securing speakers, biographical sketches and suitable resolutions another 100 letters were required. Your committee prepared two articles which appeared in the Jackson, Memphis, New Orleans and other newspapers and sent twenty special invitations to State officials to attend the services, and wrote the Vice-President of each county to urge members of the Bar to attend. The committee appreciates the co-operation and courtesy of many members of the Association but would suggest that if local bar associations would send in promptly to the Secretary of the Association or to the chairman of this committee notice of the death of a member of the Bar, together with a short biographical sketch and suitable resolutions, future committees would not have the heavy correspondence and difficulties which confronted this committee.

Special committees were appointed by the Associations in Copiah, Hinds and Warren counties and your committee commends and recommends this action to other counties. These committees attended the Memorial Service and presented resolutions with respect to deceased members from their respective counties. The President of the Association also appointed a special committee to attend. The committee here expresses its appreciation of the action of the Hon. A. H. Longino and Hon. V. J. Stricker in adjourning the County and Chancery Courts of Hinds County during the Memorial Services, so that members of the Hinds County Bar might attend.

Your Committee attaches herewith a copy of the program and suggests that it be printed, as it contains the list of the 23 members of the Bar in whose memory the service was held. The Clerk of the Supreme Court has a special minute book for recording the memorials which will serve as a permanent record of the life and work of Mississippi lawyers.

During the past year the Bar of Mississippi has lost several of its most distinguished members. No names or obituaries are given here however, as your committee recommends, subject to the approval of the Supreme Court, the continuance of the custom of an annual Memorial Day.

Respectfully submitted,
JOHN A. YEAGER,
ROBIN WEAVER,
T. J. TUBB,
LUCY SOMERVILLE HOWORTH,
Chairman.

FRED M. GLASS

"His life was gentle and the elements so mixed in him that Nature might stand up and say to all the world, this was a man."

The sudden death of Fred Glass at his home at Winona, Miss., on Friday night, October 11th, 1929, cast a pall of sorrow over our entire community. Returning to his home in company with his good wife, between nine-thirty and ten o'clock, he passed away in his yard, just after alighting from his car. The news of his death at once spread throughout the city of Winona, and in a few minutes a concourse of friends gathered at his residence to manifest their sympathies with Mrs. Glass and the splendid son, Fred, Jr.

Mr. Glass was born in Attala county, Mississippi, on March 1st, 1876. He was reared on the farm of his parents. He was ambitious to be a lawyer, and, after his training in the public schools was over, he studied law at Millsaps College, graduating there in 1902. He located at Vaiden in the practise of his profession that same year, applying himself, with all the power and energy at his command, to all legal matters entrusted to him, and became strongly entrenched in the esteem and confidence of all with whom he came in contact. His aspiration was to serve well and unselfishly.

Some four years ago Mr. Glass moved to Winona, where he continued the

practice of his profession on such a high plane, that he gained, from the start, the admiration of that community.

As a lawyer, Mr. Glass was known for his fine sense of justice and fairness. He was always respectful and courteous in his court and legal business. Courage was his outstanding quality, a courage that never faltered. The interests of his clients commandeered his zeal and strength.

As a citizen, Mr. Glass was always found working with the forces that look to the upbuilding of the community. It was his desire that the best possible conditions should be created for the betterment of his fellowmen, and he had no patience with anything that tended to impair the well-being of the people among whom he lived. He exhibited in his life a rare combination of the sterner virtues essential to a truly useful career and of those finer and more tender qualities which appeal to the heart and imagination, smooth the rough places in the road of life, and cement enduring friendships. He had a great heart, and it was intensely human. He loved his family and he loved his friends. He was too broad to hate an enemy, if he had one. He could not harbor vexation.

His faith was sublime. It was simple, but it was strong and abiding. He cared nothing for dogma, but rested his belief in the teachings of the "Man of Galilee." His trust and hope lay in the mercy of a loving Heavenly Father, extended so bountifully to himself and his fellowmen.

Peace to his ashes. With his soul, all is well.

BY MR. JOHN A. YEAGER: Mr. President, I move the adoption of the report.

BY JUDGE D. W. HEIDELBERG: Mr. President, I move that the committee amend its report to show what members of these deceased lawyers are members of this Association; and that can be furnished to the gentleman who publishes the minutes. I think it ought to be shown whether these deceased lawyers are members of the Association.

BY MR. YEAGER: The minutes of the Supreme Court will show the very information you are asking for, except as to whether they are members of the State Bar Association. There are twenty-three that we cover in our report, and put their names in the Law Journal, but whether they are members of this Association or not, I am unable to say. The record of the Secretary will have to disclose that.

BY THE PRESIDENT: Was there a second to the motion?

BY MR. W. A. ELLIS: I second the motion.

BY THE PRESIDENT: You have heard the motion. All in favor of the motion will say Aye; those opposed No. The motion is carried.

Upon motion made, duly seconded and carried, the Association adjourned until 9:00 a. m., May 1st, 1930.

THURSDAY, MAY 1ST, 1930.

The Association was called to order at 9:00 o'clock a. m., by the President.

BY THE PRESIDENT: I want to take up first this

morning some committee reports. We will have the report of the Committee on Jurisprudence and Law Reform. No member of that committee seems to be present.

The next committee is that on Judicial Administration and Remedial Procedure; Judge Garland Lyell is Chairman of the Committee.

BY JUDGE G. GARLAND LYELL: Mr. President, I will ask permission to pass the report of that committee for the present.

BY THE PRESIDENT: The next is the Committee on Legal Education and Admission to the Bar. I have discussed the matter with members of this committee, and they say they are not prepared to make a report.

The next is the Committee on Professional Ethics, Judge R. N. Sledge, Chairman.

BY MR. HERBERT HOLMES: Mr. President, Judge Sledge is detained on account of the serious illness of his mother, and asked me to make that announcement.

BY THE PRESIDENT: The Legislative Committee, I have a report from Mr. Henry Hilbun, who is the Chairman of that Committee, which I will file at the proper time, and it will be recorded in the Minutes.

BY THE PRESIDENT: Gentlemen, I believe Mr. Mize wishes to make a motion, and he is now recognized for that purpose.

BY MR. SIDNEY MIZE: Mr. President, and Gentlemen of the Association: Doubtless, as all of you know, it is probable that a new position will be created for a Circuit Judge for the Fifth Circuit Court of Appeals. My information is that it has already passed the Senate. Since the creation of the Circuit Court of Appeals Mississippi has never had a representative on that Court, and I think that it is very timely and fitting that a resolution be passed by the Association authorizing the President of this Association to appoint a committee to go to Washington and seek the appointment of a Mississippian on that Court, in event the position is created. I have, therefore, drawn this resolution:

WHEREAS, the Congress of the United States is about to pass a law providing for an additional Circuit Judge for the Fifth Circuit Court of Appeals of the United States; and

WHEREAS, no Mississippian has ever been appointed to the position;

NOW, THEREFORE, Be it Resolved, that a Committee of five members of this Association be appointed by the incoming President of this Association, whose duty it shall be to present the

claim of the State of Mississippi, in event of the creation of the position, to representation on the Court, and to secure for the State of Mississippi the appointment.

Mr. President, I move the adoption of the resolution.

BY MR. GUICE: Mr. President, I desire to second the motion.

BY THE PRESIDENT: The question is before the House. Is there any discussion? If not, as many as are in favor of the motion will say Aye; those opposed No. The motion is carried.

BY MR. MIZE: Mr. President, while we have this subject before us at this time, there is one man in the State of Mississippi whom I believe the Bar will unanimously endorse, in event this position is created. He is eminently fitted for the position, qualified by training, spirit and temperament, and, in fact, possesses every quality that goes to make a desirable Judge. He is a man, I believe, would stand an excellent opportunity of securing the appointment, in event the position may be created, and I believe it would be wise to make the endorsement of the Bar Association of this gentleman. And I would want it to be absolutely unanimous. I think every man here will know that this gentleman is eminently qualified, and, in my judgment, is the only man who would stand a chance of securing the position.

Of course, there are plenty of lawyers in the State of Mississippi qualified to fill the position, men who are close friends of all of us, and we would like to see a number of them appointed; but, in my judgment, there is only one man who would stand a chance to be appointed by the President of the United States, and that is Judge Edwin R. Holmes. (Applause.)

I do not know how many of you have followed the record of Judge Holmes in the appellate courts, but I have as a matter of interest, because I think so much of Judge Holmes, and as a matter of interest and of keeping in contact with the decisions of the Federal Court. I have followed every one of his decisions through the appellate courts, and, while I have not checked up on percentages, I dare say there is not any District Judge who will qualify with a higher percentage than he has. As you all know, he is one of the most painstaking, one of the fairest, and one of the most courteous Judges on the Bench, whose desire is always to follow the law. So, I move the adoption of the following resolution:

WHEREAS, it is likely that a position will be created of a new

additional Circuit Judge for the Circuit Court of Appeals for the Fifth Circuit; and

WHEREAS, the Honorable Edwin R. Holmes is eminently fitted and qualified for the position;

NOW, THEREFORE, Be it further Resolved, That the Bar Association of Mississippi does endorse and recommend the appointment of the Honorable Edwin R. Holmes, of Mississippi, for the position.

I move the adoption of that resolution, Mr. President.

BY JUDGE LYELL: I second the motion.

BY THE PRESIDENT: You have heard the motion made and seconded. Is there any discussion? Those in favor of the motion will say Aye; those opposed No. The motion is unanimously carried, and the resolution is adopted.

Gentlemen, we had set apart this morning to give a hearing to the young men in the Law School on the matter of our Law Journal, and at this time we will take up this question and have the report from Mr. Hugh Clayton, of the University Law School, and Mr. H. Edwin White, who for this session has been the Editor of our Law Journal.

ANNUAL REPORT OF THE BUSINESS MANAGER OF THE MISSISSIPPI LAW JOURNAL

"TRIAL BALANCE," MISSISSIPPI LAW JOURNAL

APRIL 26, 1930

Cash on hand	$ 181.88	
Expenses	1,801.98	
Accounts receivable:		
The Harrison Company	15.00	
Bank of Oxford	10.00	
West Publishing Co.	70.00	
McCowat-Mercer Publishing Co.	75.00	
University of Mississippi	15.00	
Columbian Mutual Life Ins. Co.	5.00	
Bobbs-Merrill Company	105.00	
J. E. Neilson Co.	5.00	
Davidson's Variety Store	5.00	
W. H. Anderson Company	15.00	
Ramey-Webster Company	5.00	
G. W. Sparger	5.00	
Mississippi Building Comm.	224.80	
Subscriptions		1,209.35
Advertisements		580.00
Profit and Loss, surplus from 1928-29		708.31
Accounts payable:		
Lawyers Co-op. Publishing Co.		16.00
Bancroft-Whitney Company		25.00
	$2,538.66	$2,538.66

STATEMENT OF INCOME AND EXPENSES

Receipts:			
Subscriptions	$1,209.35		
Advertisements	580.00	$1,789.35	
Deduct:			
Operating Expenses		1,801.98	
Loss on Operations			$12.63
Other Losses:			
Loss on Books Sold			41.20
Bad Checks			6.15
Total losses on fiscal period, 1929-30			$59.98

We, the Senior Auditing Class, having audited the books of the Mississippi Law Journal, as submitted by the Business Manager, Hugh N. Clayton, find the above statements to be correct. Every transaction shown on the books up to April 26, 1930, has been accounted for and taken into consideration in the statements herein prepared.

Respectfully submitted,
ELLIS M. ABRAHAM, and
K. M. HARAWAY, for
Senior Auditing Class
University of Mississippi.

Attest:
A. B. CROSIER.
Approved:

BY THE PRESIDENT: I think at this time we might take up the election of President for the next term; the Chair will, therefore, hear nominations for President.

BY JUDGE G. GARLAND LYELL: Mr. President, it has been a sort of aphorism with the Bar Association, as with other organizations somewhat akin to its character, that the office should seek the man and not the man the office; and for a number of years of attendance on meetings of the Association it has been the observation and experience of all of us, I am sure, that there has been very little, if any, skirmishing, platform making, slate making, and so forth; but that, on the other hand, we have waited until we have conveniently and properly assembled, and then sentiment begins to take form and crystallizes in the selection of whom we should choose for our officers. Particularly is that true of the office of President.

I have in mind a distinguished member of the Mississippi Bar, a man who embodies in himself all of those high qualifications which should be found in one who is the titular head of our Association. We all feel a keen interest in our choice. First and foremost, we want a man of outstanding character; secondly, and of no less importance, he should be a lawyer of outstanding ability; he should be a busy lawyer; he should be an energetic man; he should be an indefatiguable worker, because the President of this Association, if it shall live, should be a man who has those and other characteristics. After an acquaintance of over

twenty-five years with one of our Jackson Bar, it gives me very great pleasure to nominate for the office of President of this Association the Honorable George Butler, who has had a distinguished career at the Bar, who served most efficiently and capably as Assistant Attorney General, and whose whole private life, public life, and legal life, have been to the best of my knowledge, information and belief—and it is a comprehensive one—always four-square with the requirements that should characterize the practice of our profession. (Applause.)

BY MR. W. S. WELCH: Mr. President, I know of no man in this Association better qualified by training, experience and character than the man who has been put in nomination by my friend from Jackson, and I desire to second the nomination of Honorable George Butler.

BY MR. E. L. DENT: Mr. President, I move that the nominations be closed, and that the Secretary be instructed to cast one vote for all for the Honorable George Butler, of Jackson, Mississippi, for President of the Association.

BY MR. SHOTTS: I second the motion.

BY THE PRESIDENT: You have heard the motion. All those who favor the motion will let it be known by saying Aye; those opposed No. The motion is carried, and the Secretary will cast the vote.

BY THE SECRETARY: I hereby cast one vote of the Association for Honorable George Butler for President of the Mississippi State Bar Association for the term 1930-1931. (Applause.)

BY THE PRESIDENT: I will ask Judge Lyell and Mr. Holmes to escort the gentleman to the front, so the Association may see and hear from him.

Mr. Butler was here escorted to the front of the auditorium.

BY HON. GEORGE BUTLER: Mr. President, and Gentlemen: It is not my purpose to make a speech. I feel, however, that I should say to this Association that I deeply appreciate the honor you gentlemen have bestowed upon me by electing me as your President. I want you to know, however, how I feel in assuming this office at this time, I assume it with the full knowledge that the Association really faces a crisis. My judgment is, if we do not go forward we will certainly go backward. I shall have but one purpose as your President; that will be to administer the duties of this office fairly, impartially, conscientiously and energetically. I certainly trust you will not regret the action you have taken today. I thank you. (Applause.)

BY THE PRESIDENT: Gentlemen, I believe we might complete here the election of officers. The next officer to be elected is that of Vice President.

BY MR. GEORGE J. LEFTWICH: Mr. President, I desire at this juncture to make the nomination of a gentleman who is one of many who have shown us hospitality, Mr. Hanun Gardner.

BY MR. T. C. HANNAH: I second the nomination.

BY THE PRESIDENT: Are there any other nominations? It has been moved and seconded that Mr. Hanun Gardner of the Gulfport Bar, be elected as Vice President for the ensuing year. All who favor the motion will say Aye; those opposed No. Mr. Gardner is unanimously elected. Will you please stand or come around so we may see you, Mr. Gardner?

BY MR. HANUN GARDNER: Mr. President, and Members of the Mississippi State Bar Association, I do not take any credit at all for myself that you have honored me with this position; but I do know, and realize and appreciate, to the fullest extent, that it is a gracious expression on behalf of the State Bar Association to the Harrison County Bar for having given us the pleasure of entertaining you. I thank you in the name of the Harrison County Bar Association for the compliment you have bestowed upon it by honoring me as a member of that Association as Vice President.

BY THE PRESIDENT: Now, gentlemen, the next office is the Executive Committee. Following the election of the Executive Committee there is going to be the report of Committee on Grievances. I will ask the members from the Northern District to assemble over here on the left; the Middle District in the rear; and the Southern District over on the right, select your member and report back. The Association will take a five minutes recess.

After Recess

BY THE PRESIDENT: I will hear the report from the Northern District. (The following nominations were made for Executive Committeemen):

Northern District: Hon. George J. Leftwich, of Aberdeen;

Middle District: Hon. R. M. Kelly, of Vicksburg;

Southern District: Hon. Sidney Mize, of Gulfport.

Upon motion, duly seconded, the three members named were unanimously elected.

BY THE PRESIDENT: Gentlemen, we will hear from a special committee at this time. I think it is better to get it out of the way. Mr. Jacobson is the Chairman.

SPECIAL GRIEVANCE COMMITTEE REPORT

To the Officers and Members of the Mississippi State Bar Association.

Gentlemen:

The Special Grievance Committee, appointed by the President of the Mississippi State Bar Association at its annual meeting held in the year 1928 to investigate and consider, and if thought proper, to institute disbarment proceedings against Mr. B. F. Bell on charges preferred before the Mississippi State Bar Association, begs leave to submit this its final report.

That your committee made investigation and had a hearing of the matter at which Mr. Bell and his attorney were present, and after deliberate consideration concluded that disbarment proceedings should be instituted by the Mississippi State Bar Association, and by authority given it, employed Honorable W. C. Sweat, Attorney at Law, of Corinth, Mississippi, to represent the State Bar Association as its attorney in the matter of conducting the disbarment proceedings.

The disbarment proceedings were promptly instituted and a hearing was had during May 1929, before the Honorable T. P. Guyton, Chancellor of the Sixth Chancery District of Mississippi. And on the 8th day of April, 1930, the Chancellor delivered a written opinion, and among other things stated that the charges preferred against Mr. B. F. Bell were not sustained by that clear and convincing evidence, and degree of proof which the law demands in disbarment proceedings, and dismissed the proceedings. A copy of said opinion is hereto attached, marked "Exhibit A".

Your committee has considered the matter as to whether or not an appeal should be advised from the decision of the Chancellor, and it is the unanimous opinion of the Special Committee herein that in this proceedings, in which the matter has been adjudicated upon a trial on its merits by the Chancellor, that the State Bar Association should not appeal from the decision thereof; but should be content with the matter as passed upon by the Chancellor, and proceed no further in said matter.

Your committee would further request that the Honorable W. C. Sweat now be paid the agreed attorney fees, insured by authority of the Association for his efficient and valuable services rendered on behalf of the Association.

Respectfully submitted,

GABE JACOBSON, Chairman,
W. H. WATKINS,
S. H. LONG,
Special Grievance Committee.

IN THE CHANCERY COURT OF OKTIBBEHA COUNTY

Exparte B. F. Bell

No. 3456

Disbarment Proceedings.

OPINION OF THE COURT

The proceedings in this case were instituted by a committee duly appointed by the State Bar Association in the Chancery Court of Oktibbeha County, Mississippi, against B. F. Bell, a practicing attorney at law, seeking to have his license as a lawyer revoked by the Court, and his name stricken from the roll as an attorney.

The specifications, or charges, on which petitioners seek his disbarment, contain, in short, the following accusations:

First: That B. F. Bell, while a practicing attorney of the Oktibbeha County Bar at Starkville, Mississippi, and other places, forged what purported to be a certified copy of a decree of the Chancery Court of said county in an alleged cause of B. F. Bell vs. Ella S. Bell, the lawful wife of B. F. Bell, forging the name of J. R. Long, the clerk of the court, and impressing the seal of the court on said certified copy, said certified copy purporting to have been signed by A. J. McIntyre, the Chancellor, and purporting to have granted to said B. F. Bell an absolute divorce from his wife, when in truth and in fact there had been no such proceedings or record of same in court.

Second: That said B. F. Bell sent this forged and fraudulent certified copy of decree through the United States mail to Mrs. Rosa Rives at Kansas City, Missouri, the woman he was preparing to marry, and that this was done for the purpose of fraudulently representing to her that he had been divorced from his lawful wife, all of which was false and fraudulent and well known to be false and fraudulent by B. F. Bell at the time. This was on or about the 14th day of September, 1923.

Third: That said B. F. Bell went to Kansas City and there went before the proper office, made affidavit to procure marriage license to marry Mrs. Rosa Rives, in which he falsely swore that he was a single man.

Fourth: That in pursuance of said false and fraudulent scheme, said B. F. Bell, on the first day of January, 1924, entered into what purported to be a marriage contract with Mrs. Rosa Rives, in Kansas City, Missouri, and thereafter from January 1st, 1924 to January 15th, 1924 and from on or about March 15th, 1924 to on or about the 4th day of April, 1924, he lived and cohabited with Mrs. Rosa Rives as man and wife, at Kansas City, Missouri, then severing his relations with her under false promises, returning to his home at Starkville, Mississippi, and resuming his marital relations with his lawful wife, and his practice as an attorney at law, in the courts of Oktibbeha County and other courts of the state.

B. F. Bell, by his attorney, files his answer to this petition in which he denies each and every accusation contained in the specifications and prays that he be not disbarred and that the petition be dismissed, etc.

When this cause came on for hearing before the Court, the regular Chancellor of that District, certified his disqualification and I, as Chancellor of the adjoining district, at the request of the regular Chancellor and solicitors for both sides assumed, under the law, jurisdiction to hear and determine the cause presented, a trial presenting issues of a delicate nature, one which no Chancellor relishes the idea of assuming jurisdiction of outside of his district to hear and determine, but involving duties and responsibilities that no Chancellor or Judge should or would avoid in the administration of justice without a legitimate excuse.

The hearing was continued once on application of the accused, B. F. Bell, because of his sickness. By agreement of the parties the case was set for hearing in vacation and was heard at the court house of Oktibbeha County on the 6th day of May, 1929. The entire case on the pleadings and evidence was presented on the afternoon of that day, concluding late in the afternoon. Counsel for the accused asked that the argument of the case be postponed until the next morning, because of his weak physical condition. Counsel for petitioners desired to conclude the argument that evening or night because of other pressing legal engagements that necessitatd his presence at a distant

place the next day. The court much preferred that the case be argued the following morning while the evidence was fresh in his mind, but finally conceded to the agreed request that an order be entered taking the matter under advisement, for the stenographer's notes to be transcribed, and for counsel for both sides to submit briefs and all sent to the Chancellor for his consideration and determination in vacation. This was done and all the pleadings and evidence and briefs of counsel have been before me for consideration since some time in June, 1929. Since then a life busy almost beyond its capacity with other legal and official matters over a large judicial district has given scant time for the consideration of this case that its importance demands. And right here I desire to say, but without any special criticism of counsel in this case, that it too frequently happens that counsel, when cases are heard on the pleadings and evidence, request a postponement of the argument of the law and the facts until some later time, so that they may meet other engagements. They should arrange in advance for these contingencies when possible and not burden the court with having to carry the details of the evidence in his mind or the alternative of having to review the entire case from the record and evidence when finally submitted. But this I have done. I have carefully reviewed all the pleadings, all the evidence, and have carefully read and considered the arguments on both the law and the facts that have been so ably prepared and presented by learned counsel for both sides, in their briefs. I have also considered the case at bar in the light of the recent opinion of the Supreme Court of Mississippi in the case of Exparte Redmond, reported in the advance sheets of the So. Rep., Vol. 125, No. 7, page 833, dated February 27th, 1930.

The decision of the Supreme Court in the above cited case more clearly defines the law in Mississippi relative to disbarment proceedings than we find expressed in the decisions of our highest court heretofore rendered. Some of the points discussed and decided therein appear in much conflict in the decisions of courts of other states, some of which are cited and quoted along with the decisions of our own state in the briefs of counsel in the case at bar in support of their respective views of the law. Learned counsel take opposite views as to the proper interpretation of the law on the particular point raised. Especially is this true with respect to the question as to whether a disbarment proceeding is in the nature of a *Civil* action wherein the "Preponderance of the evidence," is all that is necessary to establish the guilt of the accused, and wherein the rule is generally stated that in civil cases it is irrelevant to show the good character of either party.

In Exparte Redmond, Supra, Chief Justice Smith, speaking for the Court, and citing *McCain vs. Cochran*, 153 Mississippi, 237 and 6 C. J. 607, says:

> "A disbarment proceeding is not strictly either a civil or criminal proceeding, but is akin to both. In form it is civil, but in substance it is criminal; for, though disbarment is for the protection of the courts, the legal profession, and the public, its effect on the attorney disbarred is the same as if his disbarment were a punishment for wrongdoing, and the rule, even in ordinary civil cases where the defendant is charged with fraudulent conduct, is that his guilt must be proved by *clear and convincing evidence.*" (The underscoring is mine.)

So the law is settled as to the degree of proof necessary to a conviction in the case at bar—the proof must be clear and convincing. He must be presumed to be innocent of all the accusations, or charges, made, and his guilt must be established by clear and convincing evidence.

At the trial of the case much evidence was offered on behalf of the accused to show his good character as related to his ability, integrity, fair-dealing, and honesty as a practicing attorney at the bar. Objection was made to this testimony on the ground that as a disbarment proceeding is in form a civil proceeding, such evidence is irrelevant and incompetent. All the evidence was taken down by the stenographer and the ruling of the court was reserved until the authorities could be cited on this point. None have been cited by either side, which, to my mind, should govern the Court in passing upon the admissibility of this evidence in the case now before the Court.

All the charges presented in the petition against the accused constitute crimes amounting in law to felonies—such as forgery, transporting through the United States mail fraudulent and forged documents, perjury, and bigamy, and in relation to which the accused would be subject to prosecution in the courts of the United States, the State of Mississippi, and the State of Missouri having criminal jurisdiction. The acts complained of are alleged to have been committed by the accused in the late fall of 1923 and the early part of 1924. The petition for disbarment was filed February 13th, 1929, five years or more after the alleged commission of the acts. The accused offers this character evidence to show that during all this time and up to the trial of the case, he had a splendid reputation as an attorney for honesty, integrity, and fair-dealing, and to show this he offers the testimony of certain officials of the court, several lawyers of the district, and several citizens of the community wherein he has practiced law for many years. All give him a good name. No evidence was offered to rebut this line of testimony.

In view of all the circumstances surrounding this case and the further fact of law that a disbarment proceeding is akin to both a civil and a criminal proceeding, its effect on the attorney disbarred being the same as if his disbarment were punishment for wrongdoing, I am admitting this evidence as competent and relevant, and will consider the same in the decision of this case. (Counsel for the petitioners may note an exception to the ruling of the court in admitting this line of evidence.) I can see no good reason why such evidence is not admissible, although the law is well settled that the *purpose* of a disbarment proceeding is not to punish the attorney, but to annul the right of the attorney to practice, as a protection to the court, his clients, and the public against his unworthy conduct in his professional dealings with them. The *effect*, however, on the accused remains the same in case of his disbarment as if he were punished for wrongdoing, and this punishment would be inflicted more than five years after the commission of the acts complained of and at a time when the accused, if guilty of all the acts complained of five years ago, stands before the court with undisputed evidence of good character, conduct, and behavior as an attorney ever since that time.

Notwithstanding the fact that our statute provides that when an attorney is disbarred by the courts he shall "Never thereafter be permitted to act as an attorney or counsellor in any court in this state," the Supreme Court of this state in Exparte Redmond, 82 So. Rep. 513, held that, on application of a disbarred attorney to the court that had previously disbarred him, showing that since such disbarment proceedings said attorney's conduct had been above reproach, and praying the court that his character, conduct and behavior be inquired into and that he be reinstated as a practitioner of law, that it became the duty of the court to inquire into the merits of the application and if satisfied that his franchise should be restored, the court would have the power to restore to him his privileges as an attorney at law. The court held that the above quoted clause of the statute meant that the attorney could not be permitted to practice his profession so long as the judgment disbarring him remained unchanged.

Then, if this be the law—and it is the law—why should this evidence of good character be excluded at this hearing? If excluded and the court should then find that the evidence was sufficiently strong and convincing to disbar the accused for acts committed more than five years ago, then, under the ruling in the case last cited, the accused would have the right to hereafter petition the court for reinstatement and produce all the evidence submitted here as to his good character, conduct and behavior. The court would have the right to reopen the case and if the evidence so justified could restore his franchise, thus giving him another chance to make a livelihood in his chosen profession at a time when his character, conduct and behavior would show proper protection to the court, his clients, and the public. Then why reject it now? The true purpose of disbarment proceedings is to protect the court, the clients, and the public against present and probable future misconduct of unworthy attorneys that have found their way into the honorable profession of the law, and not to punish them for long past acts of misconduct. When such conduct partakes of so serious a criminal nature as is presented in this

case, the facts of which were long known to exist by the principal witnesses against the accused and were of current rumor for some time before these proceedings were instituted, it is strange that no action had been taken to bring the accused to the bar of justice in the court of criminal jurisdiction. Had this been done and the accused convicted of either of the charges made the trial court would have, under Section 192 Hemingway Code 1917, entered an order disbarring him from the practice of the law and striking his name from the roll of attorneys. But our statute does not require a conviction as a prerequisite to disbarment proceedings.

There seems to be no time limit fixed in which such disbarment proceedings may be instituted, but I think they should be seasonable interposed. After long delay as in this case, vital evidence becomes misplaced or destroyed and the memory of witnesses as to dates, time and places which constitute material and vital facts fade into uncertainty. We have no statute of limitations governing disbarment proceedings and those analogous in criminal cases are not applicable. No such defense is pleaded here, and, if pleaded, would not of itself be a defense. However, I do not think that this makes it any less the duty of the court to regard with disfavor such proceedings when instituted after great lapse of time from the commission of the acts complained of, and especially is this true where there is a denial of the charges and considerable evidence is given in support of the defense set up in the nature of an alibi, as is true in this case. In some jurisdictions the rule is stated, as announced in Ruling Case Law, Vol. 2, page 1106, and citing 95 Am. Dec. 342, 2 A. S. R. 860, and notes thereto, as follows:

> "With regard to the time of instituting disbarment proceedings informations against attorneys are as a general rule regarded with disfavor after a great lapse of time from the commission of the acts complained of. Thus an application to strike an attorney from the rolls for misconduct was held made too late after a lapse of three and one-half years. And where the charge was of gross oppression to a client, it was held that the application was too late when made after three terms."

In South Dakota the Supreme Court of that state in the Sheran case, 40 L. R. A. (N. S.), page 804, said:

> "While the charges made in the proposed specifications were, if true, sufficient to show that respondent was, at the time referred to, not only unfit to be a member of an honorable profession, but absolutely unfitted for the society of respectable people, yet it is and should be the policy of the law to forgive one of his errors long since past, and not to allow the same to be resurrected where there is nothing to show but that for several years after the wrong doing the party may have lived an exemplary life."

The case now under consideration presents a similar situation and if the courts of Mississippi should follow the ruling laid down by the South Dakota court this case would necessarily end here.

Our statute on disbarment (Section 200 Hemingway Code, 1917), reads as follows:

> "If any attorney or counsellor at law be in default of record, or otherwise guilty of any deceit, malpractice or misbehavior, or shall wilfully violate his duties, he shall be stricken from the roll and disbarred, and his license revoked by any court in which he may practice; and such person shall never afterward be permitted to act as an attorney or counsellor in any court in this state."

The Supreme Court of Mississippi in the case of Exparte Redmond, (reported in the advance sheets of the So. Rep., Vol. 125, page 833), in construing this statute has the following to say:

> "It may be that the conduct set forth in this statute should be construed to be such only as relates to an attorney's professional conduct, but it will not be necessary for us to so decide, and we express no opinion thereon. The only conduct set forth under which this specification could be brought is that designated as 'misbehavior.' That is a word of broad meaning, but, under familiar rules of construction, its meaning must be restricted to the accomplishment of the purpose for which the statute was intended. Assuming then, for the purpose of argument, that

> the word includes misbehavior other than such as relates to any attorney's professional duties, it is clear from its context and the purpose sought to be accomplished by the statute that it refers only to such misbehavior as demonstrates an attorney's unfitness for the confidence and trust which attend the relation of attorney and client and the practice of law before the courts. This is as far as any of the courts have gone in disbarring attorneys for conduct other than such as constitutes a breach of their official duties.''

The court was here speaking of the fourth specification wherein Redmond was charged with offering to procure the appointment of applicants for Federal offices for compensation to himself, said alleged acts occurring five years before the disbarment proceedings were begun. The court said that said contracts were void on the ground of public policy and while reprehensible did not of itself demonstrate the unfitness of an attorney to the practice of his profession.

The Court further said:

> ''In his non-professional relations, an attorney is held to no higher standard of morals or ethics than are men of other trades, callings and professions.''

The Court added, however, that had the evidence disclosed that Redmond offered to procure the appointment by corrupt methods, a different question might be presented.

Courts generally make a distinction between acts and conduct as an *attorney* and as a *person,* and unless the attorney shows such a want of professional honesty as renders him unworthy of public confidence, or has such a bad character that he is an unsafe and unfit person to be intrusted with the powers of the profession, he will not be disbarred. And the purpose of a disbarment proceeding is to determine the fitness of an officer of the court to continue in that capacity.

In Exparte Cashin, 90 So. Rep. 850, neither the charges preferred nor the facts offered to sustain them are set out in the opinion of the Supreme Court, but some of the general principles governing disbarment proceedings as well as the acts and conduct of an attorney which will justify his disbarment are quoted from the decisions of other states with apparent approval, holding that an attorney may in his private capacity be guilty of such disreputable practices and gross immoralities and without the pale of the court which would render him unfit to associate with gentlemen and disqualify him for the faithful discharge of his professional duties and render him unworthy to minister in the forum of justice, and that when such a case is presented it becomes the solemn duty of the court to revoke the authority it gave the offending member as a symbol of legal fitness and moral uprightness, lest it should be exercised for evil or tarnished with shame. But it seems that the courts were here dealing with cases wherein the private acts of immoral conduct of the attorney were committed in close proximity to the time when the disbarment proceedings were instituted. And in the later case of Exparte Redmond, *supra,* the court seems to have restricted disbarment proceedings more clearly within the meaning and purpose of our statute setting out the several grounds of misconduct on which disbarment proceedings may be instituted against attorneys, and more nearly confining such proceedings to professional misconduct, or at least such misbehavior, if of a private nature, that demonstrates an attorney's unfitness for the confidence and trust which attend the relation of attorney and client and the practice of law before the court.

All the charges preferred against the accused in this case constitute acts of misconduct done and performed in his non-professional or private capacity. Certainly there was no relation of attorney and client existing between Bell and Mrs. Rives, nor do they involve the question of his fidelity as an attorney to the court, in any relation to his professional conduct. But I am convinced that the acts complained of, taken as a whole, if sufficiently proven by the evidence, constitute such misbehavior as would demonstrate an attorney's unfitness for the confidence and trust which attend the relation of an attorney and client and the practice of law before the courts.

Whatever may be the real truth, it is certain that there is nothing to be found in this entire record to show that before, or at the time of the alleged commission of the acts complained of, or since said time, there has existed any strained or unhappy relations between Bell and his lawful wife at Starkville. It is equally true that this record is void of any evidence showing any romantic or improper relations existing between Bell and Mrs. Rosa Rives, prior to the time of the alleged marriage to her January 1st, 1924, that will furnish a background or motive for the startling acts complained of. And the testimony of Bell in his own defense to the effect that none existed, unless otherwise impeached, must stand uncontradicted.

All the acts complained of in the several specifications are alleged to have been committed by the accused in pursuance of a false and fraudulent scheme on his part and with one purpose and design in view—to follow Mrs. Rosa Rives to Kansas City and there enter into contractual marriage relations with her, which entire fraudulent and false scheme is alleged to have been fully carried out.

It is undisputed that Bell and his wife were never divorced, that no divorce proceedings between them were ever instituted in the Chancery Court of Oktibbeha County, and that the certified copy of a decree of divorcement by the court, dated September 12th, 1923, with the certificate of J. R. Long, Chancery Clerk, dated September 13, 1923, with the seal of the court attached, is false and fraudulent and forged.

It is an established fact that Mrs. Rosa Rives was married to one who gave his name as Benjamin F. Bell on January 1st, 1924 at Kansas City, Missouri, in the home of Mr. and Mrs. W. C. Welborn; that the marriage ceremony was performed by Rev. Geo. Elton Harris; that marriage license were issued therefor by Charles H. Moore, Recorder of Deeds, on the same day on sworn application therefor by one who signed his name "Benjamin Franklin Bell," wherein W. C. Welborn was a witness to the application. This much is supported by the records and by disinterested witnesses.

Outside of the family relations of Mrs. Rosa Rives no witness has been introduced to identify the accused now on trial with the party who married her in Kansas City in 1924, although the evidence shows that there were several unrelated parties at the marriage who might have been produced at the trial to give testimony as to the identity of the party.

That the accused, B. F. Bell, did reach Kansas City on the evening of January 1st, 1924, and was married to Mrs. Rosa Rives at the home of Mr. and Mrs. W. C. Welborn the day of his arrival, and that said B. F. Bell and Mrs. Rosa Rives lived together at the home of Mr. and Mrs. W. C. Welborn as man and wife from January 1st, 1924 to January 15th, 1924, and again from March 15th, 1924 to April 4th, 1924, is supported by the direct and positive testimony of Mrs. Rosa Rives, Mrs. Dorothy Word, her daughter, Robert Rives, her son, Mrs. W. C. Welborn, her sister, and W. C. Welborn, her brother-in-law. All of these witnesses had known Bell for many years while living in Starkville. Their testimony, taken in connection with the other testimony offered on behalf of the petitioners, is direct, and convincing as to the truthfulness of the charges made. But the apparent weakness of some of this testimony will be revealed (and herein pointed out later on) when considered in the light of all the testimony and especially that offered on the part of the accused in defense of the charges preferred, said defense being in the nature of an alibi. The serious conflict in the evidence revolves around the whereabouts of B. F. Bell from January 1st, 1924 to January 15th, 1924, and from March 15th, 1924 to April 4th, 1924. The conflict in the evidence centers more around the period from January 1st, 1924 to and including January 5th, 1924. The testimony of petitioners goes to show that he was in Kansas City. The testimony of defendant goes to prove that he was in Starkville, Mississippi. It is quite evident that he was not in both places at the same time. Out of this material composed of this conflicting evidence the whole structure of this case must stand or fall.

It is undisputed that a special election was held on January 5th, 1924 in Oktibbeha and other counties in that judicial district for the election of a Circuit Judge. Bell testifies that he was in Starkville and voted at the election.

J. E. Carradine, a prominent lawyer of West Point, testifies that he talked with Bell over the phone about the election a few days prior to the election and on election day he talked with him over the phone from West Point (calling him at Starkville at his home) twice, once before and once after the polls had closed, and that Bell gave him the results of the election. He stated that he knew Bell's voice. Frank A. Critz, another attorney of West Point, corroborates the testimony of Carradine, as to Carradine calling Bell over the phone.

J. S. Richey, tax assessor, testified that he had known Frank Bell all his life, that he remembered well the special election held January 5th, 1924, that he saw Frank Bell in Starkville either the day of the election or only a day or two before the election, his best judgment being that it was the day of the election, and talked with Bell about the election.

J. E. Buckner, Chancery Clerk, testifies that his best recollection is that he talked with Bell in Starkville on Friday before the election on Saturday. He recites the conversation had on the corner near the court house. He is sure this conversation was within a week of the election and is pretty positive it was the day before the election.

B. H. Loving, attorney from West Point, testifies that he too talked with Bell either at West Point or Starkville about the election. He was certain that this talk was within the week of the election and his best judgment was that it took place not over three or four days prior to the election.

D. E. Rainey, one of the holders of the election, testifies that he had known Bell all his life, and remembers that Bell appeared in person and voted at said election.

J. C. Noble testifies that he had met Bell before and knew him in court, that he made his first visit to Starkville on January 1st, 1924 to see Prof. Hand on some business, that he knew but two people in Starkville, one being Bell, that he saw Bell that day in Starkville and talked with him, that he knew this was the first day of January because it impressed him with the fact that this was his first visit to Starkville and it was the first day of the year, 1924.

J. J. Reed, Circuit Clerk, testified from the records of his office that the poll books used in the special election for January 5th, 1924 indicated by check mark that B. F. Bell had voted in that election. He further testified that he had previously examined with Bell the poll books to see whether Bell had voted, and that the books so showed then, but that this was done after the book has been taken out and returned by Mr. B. M. Walker, Jr. To rebut this testimony as to what the poll books showed, the petitioners introduced B. M. Walker, Jr., and W. W. Magruder. Both testified that B. M. Walker got the poll book from the office of the Circuit Clerk and carried the book to the law office of Magruder & Walker a short time after the meeting of the State Bar Association in May, 1928, and examined same with a view of ascertaining whether or not B. F. Bell had voted in the special election in 1924, and they both testify that there was no mark there to indicate that he had so voted, that they again examined the poll book in January, 1929 and found the mark there indicating that he had voted. Mr. Magruder further testified that he was a candidate in the election and vitally interested, that he went to office of Bell and inquired for him that day there in town but that he could not be found, that the law office of Bell was closed for about six days before the election and was not opened by Bell, so far as he knew, until about the 16th or 18th of January, 1924. But he did not know where Bell was. J. Odie Daniels testified that Bell told him about the last of December, 1923, or the first of January, 1924, that he did not expect to be present at the election on January 5th, 1924, that he expected to quit the law practice, sell his library, and mentioned the insurance business and Florida and Kansas City and Dallas in connection therewith. He further testified that it was a cold day on the day of the election and not many people were on the streets and that he could not say whether Bell was or was not in town that day. It will be noted that neither side offered, nor gave any excuse for not offering in evidence the list of the names of voters that voted at the election as shown by record made by the clerks of the election.

B. F. Bell, the accused, testifies that he was at Starkville until January 15th, 1924; that he voted for W. W. Magruder in the election on January 5th, 1924; that he married when he was 18 years of age; that he has six children and three grandchildren; that his married life has been happy and that he has never had any occasion to quit his wife; that he never heard of this alleged divorce proceeding and his alleged marriage to Mrs. Rives until he got into the race for District Attorney to succeed Mr. Rencher, who had died, when such charges were circulated on him in the campaign. He admits writing Mrs. Rives a letter and mailing it in the envelope marked as an exhibit to her deposition, but denies that he enclosed in it the alleged certified copy of the divorce decree as testified to by her. He states that Mrs. Rives had written to him asking for a loan to use in going into business with Mr. and Mrs. W. C. Welborn in Kansas City and that his letter was a reply to this in which he declined to make the loan and stating that he had not received full pay for a former loan made to her. He states further that he went to Kansas City about the 24th day of March, 1924 and returned home March 31st, 1924, but never saw Mrs. Rives while out there, that he went out there on other business matters. He denies telling anyone that he was divorced from his wife or that he had ever married Mrs. Rives. He admits writing to Callaway, but claims that he wrote to him from Nashville, Tenn., while on his way to Florida looking for a location. He could not remember the names of the hotels or the lawyers he talked with in Nashville and in Jacksonville, Florida, saying that it had been five years since he made the trip and that the lapse of time had caused this to slip from his memory. He admitted deeding his home property to his wife by deed dated December 27th, 1923, saying that it was done at her request. He testifies that Mrs. Rives is two or three years older than himself, so he had been informed. In the light of this testimony offered in defense of this proceeding, I will now briefly review some pertinent facts as revealed from the testimony offered by petitioners in support of the charges made against the accused.

Mrs. Rosa Rives testifies that she lived in Dallas for about two years after she says she and Bell were married under the name of Mrs. B. F. Bell; that for nearly two years Bell wrote her regularly, but that finally the letters got few and far between, and that he finally wrote her that he had deceived her and that he had never been divorced; that she then resumed her former name, Mrs. Rives; that during this correspondence of two years after their alleged marriage she had heard rumors to the effect that Bell had deceived her and had never been divorced, but she never believed them until Bell wrote her himself. Then she testifies, *that all of these letters from Bell she had destroyed long ago.* About this time—two years after the marriage, she states she turned over to W. C. Welborn the certified copy of the divorce decree she testifies Bell had sent to her in September, 1923. According to the testimony of W. C. Welborn he never saw or heard of the certified copy of the decree of divorce until he visited Dallas in October, 1927, when Mrs. Rives showed it to him. Mrs. W. C. Welborn never heard Bell say he was divorced.

Mrs. Dorothy Word testifies that Bell told her in a letter he had written her, and in which he had enclosed a copy of the divorce decree, that he was mailing one to her mother, Mrs. Rives, and in that letter Bell asked her to return to him the copy sent to her, which the witness says she did, and then states she *destroyed the letter from Bell to her.*

Mr. T. W. Woodward, who married a daughter of Mrs. Rives, testifies that he heard of the marriage and went to Dallas to see his mother-in-law; that he there saw the certified copy of the decree of divorcement and took note of book and page, etc., where it was shown to have been recorded on the minutes of the Chancery Court of Oktibbeha County; that soon thereafter he saw Bell at his office near the court house at Starkville, and informed Bell of what he had heard in Dallas. This was about August, 1924, according to the testimony of witness. He states that Bell then and there insisted that he was divorced from his wife, that Dr. Eckford and Tom Jones were present when the divorce was granted, and that he was going to straighten out his business affairs, and go back to Kansas City or Dallas and go into business and resume his marriage relations with Mrs. Rives. Witness states that he

knew at this time that Bell was then living with his wife in Starkville, yet he states he then made no further inquiry to see from the records whether Bell was in reality ever granted a divorce from his wife in Starkville. He further testifies that a short time thereafter he returned to Starkville and ascertained from the records that Bell had never been divorced.

E. E. Callaway of Lakeland, Florida, testifies by deposition as to certain correspondence between him and Bell during the latter part of December, 1923 or the early part of 1924, the witness not being definite as to the time. He states that Bell wrote him from *some where out west,* the place he did not recall, and in searching his files, he too, *fails to find the letters* that would definitely fix the place from which Bell had written. Bell testifies that he had written to Callaway from Nashville, Tenn. It might be here said with certainty that if the missing letters testified to by Mrs. Rosa Rives, Mrs. Dorothy Word, and E. E. Callaway, could have been produced at the hearing of this case, they, or perhaps any of them, would have been amply sufficient to make "clear and convincing" the other proof submitted, to identify and connect the accused with the charges complained of. It is just a little strange that Mrs. Rives would continue to have faith and confidence in Bell, as she testifies, for two years after he left her in Kansas City and returned to his wife in Starkville. She must have known that he was living with his wife, for her son-in-law, Mr. Woodward, knew it in August, 1924, and Mrs. Rives states she had heard rumors to that effect. And yet when he did write her and admitted his deception, according to her evidence, *she destroyed all his letters*—the positive and conclusive proof of his misconduct, but preserved and later delivered over to W. C. Welborn the alleged forged document that furnished the basis of the deception and the foundation of the charges on which this disbarment proceeding is predicated.

Learned counsel for petitioners in his able brief contends that if the accused is guilty of the charges preferred against him, or any of them, he has, by testifying that they were not true, made it doubly certain that his name should be stricken from the roll of attorneys, that by so testifying falsely he had placed himself beyond any power whatever the court might have had to overlook his action of misconduct occurring some five years ago. This contention is no doubt sound in law and is in accord with my sense of judicial responsibility, but it is the exercise of a delicate duty that must be performed with care and caution. For this reason I have deemed it essential to set out in this opinion the nature and strength of the evidence, other than that of the accused himself, offered in support of his contention, and have pointed out with some particularity missing links of misplaced and destroyed evidence of a vital nature that tends to detract from the weight of the other very strong evidence submitted to prove the guilt of the accused. Under such circumstances, as disclosed by the entire evidence, I do not think that rule should be applied here.

Before announcing my conclusion, I desire to say that no criticism may justly be attached to the courts, the legal fraternity, or the Bar Association because of the long delay in preferring these charges. It seems that they were not brought to the attention of Judge McIntyre until the latter part of December, 1927, and were referred to the Bar Association, which acted thereon by appointment of proper investigating committee at its May meeting, 1928.

CONCLUSION

Considering that the real purpose of a disbarment proceeding is to "protect" rather than to "punish", as outlined in this opinion, and the undisputed fact, as disclosed by the record, that since the alleged commission of the acts, which occurred more than five years before the institution of this proceeding, the accused, if ever guilty, has "Risen on stepping stones of his dead self to higher things," and now enjoys the confidence and esteem of court officials, attorneys, and the public, in his relations as an attorney, I feel that due recognition should be given to this situation by a court of equity in the exercise of a sound discretion involving a delicate duty.

The charges preferred, constituting acts of a non-professional or private

nature, are supported in many respects by very strong evidence. But this evidence has elements of weakness, due perhaps to the long delay in presenting it; and when considered in connection with the substantial evidence offered in defense of this action which also has its elements of doubt and uncertainty, due likewise to the long delay in bringing this action, the court is confronted with a substantial, direct, and positive conflict in the evidence as a whole, arising out of the dimness of the past. Considering it all, in the light of this conflict, at this late day, I have reached the conclusion that the charges preferred are not sustained by that *clear and convincing* evidence—that degree of proof which the law demands in disbarment proceedings.

Having reached this conclusion, the application to strike from the roll of attorneys, the name of the accused, B. F. Bell, will be denied.

A copy of this opinion will be furnished to each attorney of record, Hon. Geo. T. Mitchell for the accused, and Hon. W. C. Sweat for petitioners, and the original filed with the record in this case as a part thereof.

Hon. Geo. T. Mitchell may prepare the decree of the Court, submit a copy to opposing counsel, and have same before me for my final signature at my office at Kosciusko, Mississippi, April 12th or 19th, 1930.

This April 8th, 1930.

T. P. GUYTON,
Chancellor, 6th District.

BY MR. JACOBSON: Mr. President, I move the report be received and the Committee be discharged.

BY MR. HENRY SHOTTS: I second the motion.

BY THE PRESIDENT: You have heard the motion. All in favor of the motion will say Aye; those opposed No. The motion is carried.

Judge Venable, I believe you have a little report or motion that you want to make with reference to your report on yesterday.

BY JUDGE W. W. VENABLE: Mr. President, the motion I wish to make is that a committee be appointed to draft the necessary acts which will be necessary to carry the recommendations into effect with reference to Judicial Council Rule-making Power, and report those drafts back to the Association at its next meeting for consideration.

BY MR. HENRY SHOTTS: I second the motion.

BY THE PRESIDENT: All in favor of the motion will say Aye; those opposed No. The motion is carried.

There are some telegrams here the Secretary will read at this time.

Canton, Miss., April 29, 1930.

Judge T. C. Kimbrough, President
Mississippi State Bar Association,
Care Buena Vista Hotel, Biloxi, Miss.

I regret that an equity case at Yazoo City will prevent my attendance. Your administration has been very successful and I trust that the Association at its present meeting will accomplish much good. Greetings to each member present. Robert joins me in this telegram.

W. H. POWELL.

Cleveland, Miss., April 30, 1930.

Judge T. C. Kimbrough,
Buena Vista Hotel, Biloxi, Miss.

Tremendously disappointed that I cannot get away to be with my friends, the lawyers, of Mississippi. I know they will take such action as will reflect honor on the profession. Dugas will say and do what I would have done.

A. W. SHANDS.

Hattiesburg, Miss., May 1, 1930.

Mississippi State Bar Association,
Buena Vista Hotel, Biloxi, Miss.

We cannot think of anything that would give us pleasure equal to having your fine organization meet here next year. Special invitation is extended by the Hotel Hattiesburg, where your members will receive every courtesy possible. May we look forward having you with us in nineteen-thirty-one?

HOTEL HATTIESBURG,
George Sturm, Manager-Director.

Hattiesburg, Miss., May 1, 1930.

Mississippi State Bar Association,
Buena Vista Hotel, Biloxi, Miss.

Hattiesburg Rotary Club would like to see 1931 session of the Mississippi State Bar Association come to Hattiesburg. Permit us to extend you this invitation to meet here with us. We look forward to the pleasure of entertaining you in nineteen-thirty-one.

P. G. JONES.

Jackson Miss., April 30, 1930.

Hon. T. C. Kimbrough, President,
Mississippi State Bar Association,
Biloxi, Miss.

Regret exceedingly my inability attend present session Association. Missed last year's meeting account duties connected with House of Representatives investigation of state officials and now likewise impeachment proceedings before Senate prevent my attendance. Sennett Conner will report for Committee on Legal Education. Best wishes for successful meeting.

W. CALVIN WELLS.

Jackson, Miss., April 30, 1930.

Louis Jiggitts,
Mississippi Bar Association,
Buena Vista Hotel, Biloxi, Miss.

Unable to get to Convention. Sincere wishes for most successful Convention in Association's history. Wish you would confer with Jackson members to see reaction to inviting Association to Jackson next year. Am wiring Mr. Chambers, past president of the Chamber, to please represent us in the matter.

WENDELL BLACK,
Jackson Chamber of Commerce.

Meridian, Miss., April 30, 1930.

President, Mississippi Bar Association,
Buena Vista Hotel, Biloxi, Miss.

The management of this hotel will welcome the Mississippi Bar Association meeting in Meridian next year. Everything in our power will be done to meet the necessary requirements. Hoping you will choose the Queen City for your nineteen-thirty-one session.

D. C. BAKER,
Manager, Lamar Hotel.

Meridian, Miss., April 30, 1930.

Mississippi Bar Association,
Buena Vista Hotel, Biloxi, Miss.

Meridian's metropolis extends to the Mississippi Bar Association their cordial greetings and felicitations and extend to you an invitation to hold your 1931 meeting in Meridian, the home of Southern hospitality.

CHAMBER OF COMMERCE.

Hattiesburg, Miss., May 1, 1930.

Mississippi State Bar Association,
Biloxi, Miss.

The Hattiesburg Chamber of Commerce joins all our citizens and civic clubs in sending you this cordial invitation to come to Hattiesburg for your next year's convention. It would certainly give us great pleasure to have your organization meet. Please consider Hattiesburg seriously. With kind wishes for a successful meeting at Biloxi.

CHAMBER OF COMMERCE,
T. S. Jackson.

Hattiesburg, Miss., May 1, 1930.

Mississippi State Bar Association,
Biloxi, Miss.

Hattiesburg Kiwanis Club joins two hundred other civic club members of Rotary, Lions, and Exchange, in extending most cordial invitation to your grand organization to come to Hattiesburg in nineteen-thirty-one. It would be our pleasure to see that every member enjoys session in Hattiesburg to the fullest.

HATTIESBURG KIWANIS CLUB,
C. C. Buchanan, President.

Hattiesburg, Miss., May 1, 1930.

Mississippi State Bar Association,
Biloxi, Mississippi.

The people of Hattiesburg are very anxious to have your fine organization meet here in nineteen-thirty-one, and I take pleasure in extending you this invitation to honor us in that way. The fullest co-operation for your comfort and pleasure will be given by the city.

W. S. F. TATUM, Mayor.

Hattiesburg, Miss., May 1, 1930.

Mississippi State Bar Association,
Biloxi, Miss.

The Lions Club cordially invites your organization to select our beautiful city as its meeting place for next year. We certainly hope Hattiesburg will get this honor.

HATTIESBURG LIONS CLUB,
W. O. Bates, President.

Hattiesburg, Miss., May 1, 1930.

Mississippi State Bar Association,
Biloxi, Miss.

The Hattiesburg Exchange Club joins me in extending you this cordial invitation to hold your nineteen-thirty-one convention in our city. It will be a great pleasure for us to entertain the Mississippi State Bar Association next year.

O. F. KIMMONS,
President, Hattiesburg Exchange Club.

BY THE PRESIDENT: I think it might be well to get the matter of where we will meet next year settled at this

time. The Chair will hear nominations for the next meeting place.

Hon. Gabe Jacobson placed in nomination the City of Meridian; Hon. T. C. Hannah placed in nomination the City of Hattiesburg. By a vote of 61 to 36 Meridian was selected as the next meeting place of the Association.

BY HON. GEORGE T. MITCHELL: Mr. President, on behalf of the Association, I want to offer a resolution thanking the Harrison County Bar for their gracious hospitality and the splendid and pleasant manner in which they have entertained this Association on this occasion.

The resolution was adopted by a unanimous vote.

BY THE PRESIDENT: We will hear nominations for delegates to the American Bar Association.

Hon. W. S. Welch, of Laurel; Hon. John L. Heiss, of Gulfport, and Hon. J. H. Currie, of Meridian, were placed in nomination.

Upon motion made, seconded, and carried, the nominations were closed and the Secretary cast one vote of the Association for the three members nominated.

BY THE PRESIDENT: We shall now elect three alternates; who will you have for your alternates?

Hon. T. W. Davis, of Purvis; Hon. James McClure, of Sardis; and Hon. Forrest Cooper, of Indianola, were placed in nomination.

Upon motion made, seconded, and carried, the nominations were closed and the Secretary cast one vote of the Association for the three members nominated.

BY THE PRESIDENT: Gentlemen, I believe we have arrived at the point where we will hear the report of the Committee on Grievances.

Upon motion of Hon. George J. Leftwich, seconded by Hon. J. A. Cunningham, and duly carried, the Association went into executive session.

REPORT OF GRIEVANCE COMMITTEE

TO THE MISSISSIPPI STATE BAR ASSOCIATION:

Your Committee on Grievances have handled thirty-one complaints against members of the Mississippi Bar. A great many of these complaints, in fact the majority of them, have been against lawyers who are not members of our Association. We have adjusted most of these complaints to the satisfaction of the parties making them, and in such a way as to completely exonerate the attorneys involved of any charge of unprofessional conduct.

In many cases the criticisms and complaints have arisen from

attorneys failing to answer letters from their clients as promptly as should have been done. Quite a number of complaints have been filed against attorneys for failure to make proper accounting with their clients in the handling of commercial business. We have not been able to close in a satisfactory manner all of these complaints, but all are in process of adjustment and the files in these matters will be turned over to our successors.

There are several lawyers against whom legal proceedings are now pending on charges of a nature involving unprofessional conduct in each instance. We have not made specific recommendations as to these cases, believing that the Association should wait until the termination of such proceedings.

We have considered quite a number of other complaints based on unprofessional conduct of certain lawyers in the state and we make our report on each individual case as Exhibits 1 to 6 inclusive.

Our committee has had a large amount of work to do and knowing what was expected of us, not only by the Bar of the State but by the people, we have been greatly handicapped as we have had no funds with which to pay expenses of investigations, procuring attendance of witnesses, and stenographic help. We therefore recommend that this Association adopt a suitable resolution asking the State Legislature now in session to make an appropriation of Ten Thousand ($10,000.00) Dollars to be used under the direction of the President of this Association in the prosecution of the cases submitted herewith for action and such other cases as may be later reported for action by the Association.

We join in what we understand will be the recommendation of the Committee on Professional Ethics that this committee be consolidated with the Committee on Professional Ethics, the consolidated committee to be known as the Committee on Professional Ethics and Grievances, which is in accordance with the rules of the American Bar Association.

Having now made this our report, we ask that we be discharged.

Respectfully submitted,

HERBERT HOLMES, Chairman,

C. L. TUBB,

J. N. FLOWERS,

R. W. HEIDELBERG,

W. H. POWELL.

EXHIBIT NUMBER ONE

The Committee recommends that J. C. Walker, of Shaw, Bolivar County, be charged with corruptly conspiring and negotiating in the bribery of a public official of the State of Mississippi and recommends that the Association institute or cause to be instituted disbarment proceedings.

In support of this recommendation the Committee submits the attached proof.

Respectfully submitted,
HERBERT HOLMES, Chairman,
C. L. TUBB,
J. N. FLOWERS,
R. W. HEIDELBERG,
W. H. POWELL.

EXHIBIT NUMBER TWO

The Committee recommends that R. E. Steen, of Rolling Fork, Sharkey County, be charged with collusion with a state official in the acceptance of a bribe by said official of the State of Mississippi and recommends that the Association institute, or cause to be instituted, disbarment proceedings.

In support of this recommendation the Committee submits the attached proof.

Respectfully submitted,
HERBERT HOLMES, Chairman,
C. L. TUBB,
J. N. FLOWERS,
R. W. HEIDELBERG,
W. H. POWELL.

EXHIBIT NUMBER THREE

The Committee recommends that B. A. Boutwell, of Laurel, Jones County, be charged with fraud and deceit in the practice of Law, and the unprofessional practice commonly known as "ambulance chasing," and recommends that the Association institute, or cause to be instituted, disbarment proceedings.

Respectfully submitted,
HERBERT HOLMES, Chairman,
C. L. TUBB,
J. N. FLOWERS,
R. W. HEIDELBERG,
W. H. POWELL.

EXHIBIT NUMBER FOUR

The Committee recommends that Carl Marshall, of Bay St. Louis, Hancock County, be charged with unprofessional conduct in the negotiations leading up to the payment to him by George B. Crafts, general counsel of Warren Brothers Roads Company, of $80,000.00, and in the acceptance from the said Crafts, in September, 1929, of the said $80,000.00, and in his subsequent handling of the said money and in concealing the facts as to his disposition of it, and recommends that the Association institute, or cause to be instituted, disbarment proceedings.

In support of this recommendation we submit the attached proof.

Respectfully submitted,
HERBERT HOLMES, Chairman,
C. L. TUBB,
J. N. FLOWERS,
R. W. HEIDELBERG,
W. H. POWELL.

EXHIBIT NUMBER FIVE

The Committee recommends that J. H. Howie, of Jackson, Hinds County, be charged with unprofessional conduct in the handling of an anti-trust suit proposed to be filed in behalf of the State of Mississippi against Warren Brothers Roads Company, and in his participation in negotiations looking to the settlement of the claim on which suit was proposed to be filed, and in his acceptance of part of the proceeds of a settlement that was made in September, 1929, and in his failure to report and account to the State of

Mississippi with respect to the said settlement, and recommends that the Association institute, or cause to be instituted, disbarment proceedings.

In support of this recommendation we submit the attached proof.

Respectfully submitted,

HERBERT HOLMES, Chairman,
C. L. TUBB,
J. N. FLOWERS,
R. W. HEIDELBERG,
W. H. POWELL.

EXHIBIT NUMBER SIX

The Committee recommends that Sam A. Latham, of Jackson, Hinds County, be charged with unprofessional conduct in the handling of an anti-trust suit proposed to be filed in behalf of the State of Mississippi against Warren Brothers Roads Company, and in the use of certain evidence supposed to be of value in the prosecution of the proposed suit, and in his participation in negotiations looking to the settlement of the claim on which suit was proposed to be filed, and in his acceptance of part of the proceeds of a settlement that was made in September, 1929, and in his failure to report and account to the State of Mississippi with respect to the said settlement, and recommends that the Association institute, or cause to be instituted, disbarment proceedings.

In support of this recommendation we submit the attached proof.

Respectfully submitted,

HERBERT HOLMES, Chairman,
C. L. TUBB,
J. N. FLOWERS,
R. W. HEIDELBERG,
W. H. POWELL.

BY MR. HERBERT HOLMES: Now, Mr. President, we move the adoption of this report—that the report be adopted, and the committee discharged.

The motion was duly seconded.

BY THE PRESIDENT: You have heard the Report of the Committee on Grievances; there has been a motion made that it be adopted and the Committee be discharged, and that motion has been seconded. Is there any discussion of this motion? If not, all in favor of the motion will let it be known by saying Aye; those opposed No. The motion is unanimously carried, and the report adopted and the committee discharged.

BY MR. HERBERT HOLMES: Mr. President, we suggest to the Association that there should be a suitable resolution offered, or a motion made, to put into effect the recommendations of the committee, which you have just adopted; and we move you, Sir, that a Special Committee of five be appointed by the President of the Association to take such action as may be necessary to put this report into effect.

The motion was duly seconded, and after discussion was carried by a vote of 63 Yeas and 15 Nays.

* * * * * *

BY MR. W. S. WELCH: Mr. President, I offer this resolution:

BE IT RESOLVED by the Mississippi State Bar Association, that

WHEREAS, certain members of the Bar of this State are under indictment on a charge amounting to a felony, or under a charge of impeachment; and

WHEREAS, it is the sense of this Association that the matters of the proceedings in disbarment against such persons should not be delayed for a period of one year;

BE IT RESOLVED by the Association that the matter of such charges and the propriety of disbarment be, and the same is hereby, referred to the officers and Executive Committee, acting jointly with the Special Grievance Committee to be appointed, with power to act.

Mr. President, I move the adoption of that resolution.

BY MR. W. LEE GUICE: Now, will you accept a substitute for that, setting out the names of the men? We all know their names.

BY MR. W. S. WELCH: I have no objection to it.

BY MR. W. L. GUICE: Mr. President, I move that for the un-named persons mentioned there be substituted the names of Rush H. Knox, Lester C. Franklin and Cecil E. Inman.

BY MR. W. S. WELCH: I accept that.

BY THE PRESIDENT: The motion is before you. All in favor of the motion will let it be known by saying Aye; all opposed will say No. The motion is carried.

BY MR. GABE JACOBSON: This morning when the report was made about the Mississippi Law Journal, it was stated they needed $400.00 to be given by the Association. While that seemed to be acquiesced in, there was never a motion made to that effect; and I now move that the Association give to the Mississippi Law Journal the sum of $400.00, as requested in the report this morning.

BY MR. W. LEE GUICE: I second the motion.

BY THE PRESIDENT: Gentlemen, you have heard the motion which has been seconded. As many as favor the motion will let it be known by saying Aye; those opposed No. The motion is carried.

Upon motion made, seconded, and carried the Association adjourned sine die.

ROLL OF MEMBERS

HONORARY

R. E. L. SANER, Dallas, Texas

C. B. AMES

SUPREME COURT

Division A

SYDNEY SMITH, Chief Justice — W. H. COOK, Associate Justice

J. G. McGOWAN, Associate Justice

Division B

GEO. H. ETHRIDGE, Presiding Justice; V. A. GRIFFITH, Associate Justice

W. D. ANDERSON, Associate Justice

FEDERAL JUDGES

E. R. HOLMES ..... Yazoo City, Miss.
ALLEN COX ..... Baldwyn

CIRCUIT JUDGES

W. A. Alcorn, Jr. ..... Clarksdale
J. F. Allen ..... Kosciusko
E. L. Brian ..... Vicksburg
R. L. Corban ..... Fayette
W. L. Cranford ..... Seminary
S. F. Davis ..... Indianola
J. D. Fatheree ..... Quitman
R. S. Hall ..... Hattiesburg
J. Q. Langston ..... Columbia
C. P. Long ..... Tupelo
Thos. E. Pegram ..... Ripley
W. H. Potter ..... Jackson
Greek L. Rice ..... Charleston
E. J. Simmons ..... Magnolia
J. I. Sturdivant ..... Columbus
W. A. White ..... Gulfport
D. M. Anderson ..... Newton

CHANCELLORS

R. W. Cutrer ..... Magnolia
T. P. Dale ..... Hattiesburg
D. M. Russell ..... Gulfport
T. P. Guyton ..... Kosciusko
N. R. Sledge ..... Senatobia
V. J. Stricker ..... Jackson
G. C. Tann ..... Decatur
J. L. Williams ..... Indianola
R. E. Jackson ..... Cleveland

LIFE MEMBERS

E. J. Bowers ..... Gulfport
W. S. Chapman ..... Indianola
E. A. White ..... Laurel
John Sharp Williams ..... Yazoo City

ACTIVE MEMBERS

Adams, W. C., Corinth
Alexander, M. L., Picayune
Allen, B. B., Indianola
Allen, P. W., Indianola
Ames, C. F., P. O. Box 191, Times Square Station, New York, N. Y.
Amis, A. B., Meridian
Anderson, D. M., Newton
Andrews L. C., Oxford
Armistead, A. A., Vicksburg

Backstrom, J. W., Leakesville
Backstrom, Oscar, Gulfport
Barbour, J. F., Yazoo City
Barnett, D. R., Yazoo City
Barnett, T. J., Carthage
Baskin, W. E., Meridian
Batson, W. C., Wiggins
Bennett, Jr., O. H., Carthage
Berry, S. B., Hattiesburg
Bickerstaff, Reese O., Gulfport
Bloomfield, Horace, Pascagoula
Boggan, J. W. P., Tupelo
Bolton, C. R., Tupelo
Bonelli, A. M., Vicksburg
Bowdre, Paul H., Hernando
Bozeman, A. S., Meridian
Bozeman, Jr., A. S., Meridian
Brady, T., Brookhaven
Bramlett, Jr., D. C., Woodville
Breland, J. J., Sumner
Brewer, Ed, Clarksdale
Bridges, L. C., Purvis
Bridgforth, Allen, Yazoo City
Brown, C. S., Gulfport
Brown, J. T., Jackson
Brown, Chas. S., Gulfport
Brown, J. T., Jackson
Brunini, Jno., Vicksburg
Bullard, W. D., Pascagoula
Busby, A. G., Waynesboro
Butler, George, Jackson
Butts, A. B., Starkville
Byrd, J. L., Jackson

Cameron, Ben F., Meridian
Campbell, C. S., Jackson
Cantwell, O. S., Sunflower
Caradine, J. E., West Point
Carothers, A. M., Grenada
Case, H. F., Quitman
Chambers, Paul, Jackson
Clark, A. B., Indianola
Colmer, Wm. M., Pascagoula
Collins, Robt. W., Jackson
Conn, W. D., Corinth
Conner, Sennett, Seminary
Cooper, Forest G., Indianola
Corban, L. C., Biloxi
Cowan, R. C., Gulfport
Crawley, Jas. T., Kosciusko
Creekmore, H. H., Jackson
Cunningham, Jas. A., Booneville
Currie, Jr., E. J., Hattiesburg
Currie, Geo. W., Hattiesburg
Currie, J. H., Meridian
Currie, N. T., Hattiesburg
Cutrer, J. W., Clarksdale

Davis, T. W., Purvis
Deavours, Stone, Laurel
Denman, Richard, Charleston
Dent, E. L., Collins
Dent, R. L., Vicksburg
Doxey, Hindman, Holly Springs
Doxey, Wall, Holly Springs
Drake, J. T., Port Gibson
Dulaney, Jr., J. W., Tunica

Eager, Jr., P. H., Jackson
East, J. R., Brandon
Ellis, W. A., Carthage
Estopinal, Wm., Gulfport

Falkner, J. W. T., Oxford
Fant, H. M., Sardis
Fant, Lester G., Holly Springs
Farley, R. J., Oxford
Featherstone, D. M., Holly Springs
Fitzgerald, Gerald, Clarksdale
Flowers, J. N., Jackson
Floyd, J. C., Meridian
Ford, E. J., Pascagoula
Ford, J. H., Houston
Ford, R. D., Columbia
Frierson, J. F., Columbus

Gardner Hanun, Gulfport
Garnett, Chas. L., Columbus
Genin, R. L., Bay St. Louis
Gipson, J. V., Meridian

Gore, W. E., Marks
Graham, D. M., Gulfport
Greaves, H. B., Canton
Green, J. W., Jackson
Green, Marcellus, Jackson
Guice, W. L., Biloxi
Gwin, S. L., Greenwood

Hall, Wm. M., Memphis, Tenn.
Hallam, Louis C., Jackson
Haman, Jr., Thos. L., Houston
Harper, A. Y., Jackson
Heidelburg, D. W., Shubuta
Heidelburg, R. W., Hattiesburg
Hendrix, T. D., Jackson
Henley, W. S., Hazelhurst
Hewitt, F. D., McComb
Hilburn, Henry, Laurel
Hill, C. E., Hattiesburg
Hill, N. C., Hattiesburg,
Hirsch, J. K., Vicksburg
Holmes, Herbert, Senatobia
Holmes, G. M., Aberdeen
Holmes, J. G., Yazoo City
Houston, D. W., Aberdeen
Houston, D. W., Jr., Aberdeen
Howie, J. H., Jackson

Jackson, Forest B., McComb
Jacobson, Gabe, Meridian
Jiggitts, Louis M., Jackson
Johnson, Elbert, Indianola
Johnson, Paul B., Hattiesburg
Jones, Ackland H., Woodville
Jones, C. J., Waynesboro
Jones, P. Z., Brookhaven
Jones, R. L., Brookhaven

Keaton, Grayson B., Picayune
Kellner, Jr., E., Greenville
Kelly, A. F., Hattiesburg
Kelley, R. M., Vicksburg
Kimbrough, T. C., University
Kuykendall, John M., Charleston

Lake, Jr., J. A., Greenville
Landau, N. D., Vicksburg
Leftwich, George J., Aberdeen
Lindholm, P. P., Lexington
Livingston, E. M., Louisville
Lyell, G. G., Jackson
Lyon, Gordon, Indianola

Magruder, W. W., Starkville
Majure, R. S., Newton
Marshall, Carl, Bay St. Louis
Maynard, Geo. F., Clarksdale
Miller, W. B., Clarksdale
Mims, Sam C., Grenada
Mitchell, Geo. T., Jackson
Mitchell, Guy, Tupelo
Mize, S. C., Gulfport
Monaghan, Noel, Tupelo
Moody, C. C., Indianola
Morse, John, Poplarville
Morse, W. E., Jackson
Mortimer, T. E., Belzoni
Moss, O. F., Lucedale
McClelland, Thompson, West Point
McClure, James, Sardis
McDowell, J. R., Memphis, Tenn.
McElroy, T. H., Oxford
McFarland, B. H., Aberdeen
McGowan, H. R., Jackson
McIntosh, D. A., Collins
McIntosh, H. M., Collins
McIntyre, W. E., Brandon

Neill, S. D., Indianola
Neilson, E. T., Lexington
Noble, Roy P., Laurel
Nunnery, Herbert, Jackson

Odom, H. Talbot, Greenwood
Oldham, L. E., Oxford
Osborne, Sam, Greenwood
Owen, Frank C., Columbus

Pack, W. J., Laurel
Pack, W. L., Jr., Laurel
Parker, U. B., Wiggins
Parker, J. E., Meridian
Percy, W. A., Greenville
Pepper, A. M., Lexington
Posey, L. L., Jackson
Powell, W. H., Canton
Powell, R. H., Canton
Power, Geo. B., Jackson
Price, J. H., Indianola
Price, J. H., Magnolia
Price, Jr., J. H., Magnolia
Prude, Jr., J. O., Amory

Rankin, J. E., Tupelo
Reiley, M. W., Meridian
Roane, A. G., Grenada
Roberts, W. C., Rosedale
Roberts, M. M., Hattiesburg
Robertson, S. V., Jackson
Rowe, V. D., Winona
Russell, A. Bryan, Bay St. Louis
Russell, D. M., Gulfport
Russell, R. C., Magee

Sams, W. C., Meridian
Sanders, J. O. S., Jackson
Satterfield, J. C., Jackson
Savage, J. W., Gulfport
Saxon, J. B., Waynesboro
Schauber, A. B., Laurel

Schmitt, Wm. A., Clarksdale
Seale, Jr., J. E., Meridian
Shands, A. W., Cleveland
Shands, Dugas, Cleveland
Shannon, C. R., Laurel
Sharp, E. C., Jackson
Shotts, H. A., Meridian
Sillers, Walter, Rosedale
Sillers, Jr., Walter, Rosedale
Simrall, Jr., James, Hattiesburg
Smith, Ed W., Clarksdale
Smith, O. R., Corinth
Smith, Fred B., Ripley
Smith, George R., Pass Christian
Snow, Chas. B., Jackson
Stevens, Ben, Hattiesburg
Steven, H. S., Hattiesburg
Steven, J. M., Jackson
Strauss, D. S., Greenville
Stirling, J. B., Jackson
Stockstill, J. E., Picayune
Stone, Phil, Oxford
Stone, W. I., Coffeeville
Stovall, A. T., Columbus
Stovall, R. C., Okolona
Street, C. S., Laurel
Streit, R. S., Jackson
Sweat, W. C., Corinth

Talbot, J. M., Clarksdale
Taylor, D. M., Waynesboro
Taylor, J. L., Gulfport
Thomas, Frank G., Tupelo
Thomas, J. M., Tupelo
Thompson, J. H., Jackson
Thompson, R. H., Jackson
Travis, S. E., Hattiesburg
Trenholm, E. L., Jackson
Truly, E. G., Fayette
Truly, Jeff
Tubb, C. L., Aberdeen
Tubb, Talmadge B., Amory
Tubb, Thomas J., West Point
Tucker, Clay B., Woodville
Tucker, W. F., Woodville
Tyler, Luther L., Picayune

Venable, W. W., Clarksdale

Wall, H. V., Brookhaven
Wallace, W. L., Lumberton
Ward, Will E., Starkville
Watkins, W. H., Jackson
Watkins, H. V., Jackson
Watkins, Jr., Wm., Jackson
Wells, W. Calvin, Jackson
Welsh, W. S., Laurel
Westbrook, Chas. H., Meridian
White, W. A., Gulfport
White, W. H., Gulfport
Whittington, E. F., Clarksdale
Wilbourn, R. E., Meridian
Williams, E. G., McComb
Williams, R. X., Oxford
Wills, L. E., Meridian
Wiley, O. E., Ruleville
Wilson, H. J., Hazlehurst
Wilroy, N. E., Hernando
Wise, Louis, Yazoo City
Witherspoon, Gibson, Meridian
Worsham, B. F., Corinth
Wooten, R. G., Jackson
Wynn, W. T., Greenville

Yeager, John A., Lumberton
Yerger, E. M., Clarksdale
Young, M. C., Aberdeen

CONSTITUTION

Name

Article I. The name of this Association shall be the Mississippi State Bar Association.

Objects

Art. II. The objects of the Association are to foster legal science, maintain the honor and dignity of the profession of law, to cultivate professional ethics and social intercourse among its members, and to promote improvements in the law and the modes of its administration.

Election of Members

Art. III. Petitions for membership in this Association shall be endorsed by two members thereof, and shall first be considered by the Executive Committee, which committee shall report its recommendation thereon to the Association at its annual meeting, to be held next thereafter. A favorable report by this committee shall entitle a person to membership without ballot, unless a ballot on such report is demanded by some member of the Association, and, upon such ballot, five negative votes shall be sufficient to defeat any election for membership.

Membership

Art. IV. Any person shall be eligible to membership in this Association who shall be a member of the Bar of this State, in good standing, and who shall also be nominated as herein provided.

Officers

Art. V. The officers of this Association shall consist of one President, one Vice-President, a Secretary and Treasurer, and an Executive Committee, which Executive Committee shall be constituted as hereinafter provided. Each of these officers shall be elected at each annual meeting for the next ensuing year, but the same person shall not be electd for President for two years in succession. All such elections shall be held by ballot. The Secretary and Treasurer shall be elected by the Executive Committee. The officers elected shall hold office until their successors are elected and qualified according to the Constitution and By-Laws.

Executive Committee

Art. VI. The Executive Committee shall consist of five members, consisting of the President, who shall be ex-officio chairman thereof, the Vice-President, and one member to be elected at large from each Supreme Court District as now constituted, and shall discharge such duties as shall be imposed upon it by the By-Laws. It may be called together by the President or by any three members thereof.

Election of Members

Art. VII. All members of this Convention enrolling themselves and all others who have requested their enrollment, and all persons elected as herein provided, shall become members of the Association upon the payment of the admission fee as herein provided for. But after the adjournment of this Convention all nominations for membership shall be made as herein provided.

Annual Dues

Art. VIII. Each member shall pay to the Treasurer as annual dues, such sum as may be prescribed by the By-Laws, and no person shall be qualified to exercise any privileges of membership who is in default. Such dues shall

be payable, and the payment thereof enforced, as may be provided by the By-Laws. Members shall be entitled to receive all publications of the Association free of charge. The admission fee shall be such sum as may be prescribed by the By-Laws, to be paid as the member is elected. The admission fee shall be in lieu of all dues for the first year.

Adoption and Amendment of By-Laws

Art. IX. By-Laws may be adopted or amended at any annual meeting of the Association by a majority of the members present.

Committees

Art. X. The following committees shall be annually appointed by the President for the year ensuing and shall consist of five members each:

1. On Jurisprudence and Law Reform.
2. On Judicial Administration and Remedial Procedure.
3. On Legal Education and Admission to the Bar.
4. On Obituaries and Memorials.
5. On Grievances.
6. On Professional Ethics.
7. Legislative Committee.

And such other committees as may be determined at any meeting.

A majority of those members of any committee who may be present at any meeting of such committee, shall constitute a quorum for the purpose of such meeting. Vacancies in any office provided for by the Constitution shall be filled by the President, and the appointee shall hold office until the next meeting of the Association.

Meeting of the Association

Art. XI. The Association shall meet annually at such time and place as it may select, and fifty members present at such meeting shall constitute a quorum. The Secretary shall give sixty days' notice of time and place of such meeting, either by publication in a public newspaper or by personal communication.

Duties of the President

Art. XII. The President shall preside at all meetings of the Association, and shall open each annual meeting with an address, in which he shall communicate the most noteworthy changes in the statute law, on points of general interest, made in the State and by Congress during the preceding year, or he may speak upon such matters of current interest as he may deem of value to the Association. Should the office of President become vacant by death, resignation or otherwise, the Vice-President shall possess the powers and discharge the duties of such office.

Alterations or Amendments of the Constitution

Art. XIII. This Constitution may be altered or amended by vote of three-fourths of the members present at any annual meeting, but no such change shall be made at any meeting at which less than fifty members are present.

Suspension of Members

Art. XIV. Any member of the Association may be suspended or expelled for misconduct in his relations to his Association or in his profession, on conviction thereof, in such manner as may be prescribed by the By-Laws.

Affiliation Plan

Art. XV. A Local or County Bar Association in Mississippi may become affiliated with the Association on certification to the Secretary of this Association by its officers that such Local or County Association has voted to affiliate itself with this Association pursuant to the Constitution of this Association, and acceptance of such Association by vote of the Executive Committee of this Association; and such affiliation shall continue until terminated either by vote of the Local or County Association or by vote of the Executive

Committee of this Association. Each such affiliated Local or County Association shall certify annually to the Secretary of this Association any change in its membership, and pay to this Association an annual fee for each member of said Local or County Association at the rate from time to time provided by or pursuant to the terms of the Constitution or By-Laws of this Association; and all such affiliated associations shall co-operate with each other and with this Association and their and its respective committees in carrying out the objects of this Association.

No member of the bar of any city, town or village, or county, in which there shall be at the time such an affiliated association, shall hereafter be eligible to membership in this Association except as a member of such Local or County Association; and the termination of the membership of any member in any such affiliated association shall ipso facto terminate his membership in this Association. In case of the termination of affiliation of any such Local or County Association with this Association, all members of the affiliated association so desiring may remain members of this Association by paying the regular dues at the rate from time to time provided by the Constitution or By-Laws of this State Association.

BY-LAWS

I. President

The President shall preside at all meetings of the Association, and in case of absence, the Vice-President shall preside.

II. Secretary and Treasurer

The Secretary and Treasurer shall keep a record of all meetings of the Association, and of all other matters of which record shall be deemed advisable by the Association and shall conduct the correspondence of the Association, with the concurrence of the President. He shall notify the officers and members of their election, and shall keep a roll of the members and shall issue notices of all meetings; and shall collect, and, under the direction of the Executive Committee, disburse all funds of the Association. He shall report annually, and oftener if required; he shall keep regular accounts, which shall be at all times open to the inspection of the members of the Association. His accounts shall be audited by the Executive Committee. Before discharging any of the duties of this office, the incumbent shall execute a bond with good and sufficient surety, to be approved by the President, payable to the President and his successors in office in the sum of two thousand ($2,000.00) dollars, for the use of the Association and conditioned that he will well and faithfully perform the duties of his office so long as he discharges any of the duties thereof.

III. Executive Committee

The Executive Committee shall have power to make such regulations, not inconsistent with the Constitution and By-Laws, as shall be necessary for the protection of the property of the Association, and for the preservation of good order and conduct of its affairs. It shall keep a record of its proceedings. It shall direct the manner and the purposes for which all funds of the Association shall be disbursed, but it shall have no power to make the Association liable for any debts amounting to more than the amount in the treasury at any one time not subject to prior liabilities. It shall have the power to change the time and place for the holding of any annual meeting of the Association when, in its judgment, it is necessary or proper to do so. It shall select some person to make an address at each annual meeting, and not exceeding three members of the Association to read papers.

IV. Order of Business

At each annual, stated or adjourned meeting of the Association, the order of business shall be as follows:

1. Reading of minutes of preceding meeting.
2. Address of President.
3. Report of the Secretary and Treasurer.
4. Report of Executive Committee.
5. Election, if any, to Membership.
6. Report of Standing Committees.
7. Report of Special Committees.
8. Report of Miscellaneous Committees.
9. Miscellaneous Business.
10. Election of Delegates to American Bar Association.
11. Election of Officers.

The election of officers shall be held on the morning of the second day of the session.

The order of business may be changed by a vote of the majority of the members present.

No person in discussion shall occupy more than ten minutes at a time, nor be heard more than twice on the same subject.

The parliamentary rules and order contained in Robert's Rules of Order, except otherwise herein provided, shall govern all meetings of the Association.

V. Members Elect

Any person elected to membership who shall fail to pay his admission fee within one month after notice of his election shall be deemed to have declined to become a member.

VI. Committees

In pursuance of Article X of the Constitution, there shall be the following standing committees:

1. A Committee on Jurisprudence and Law Reform, who shall be charged with the duty of attention to all proposed changes in the law, and of recommending such as, in their opinion, may be entitled to favorable consideration of the Association.

2. A Committee on Judicial Administration and Remedial Procedure, who shall be charged with the duty of the observation of the workings of our judicial system, the collection of information, the entertaining and examination of projects for a change of reform in the system, and of recommending from time to time to the Association such action as they deem expedient.

3. A Committee on Legal Education and Admission to the Bar, who shall be charged with the duty of examining and reporting what change it is expedient to propose in the system and mode of legal education, and of admission to the practice of the profession in the State of Mississippi.

4. A Committee on Obituaries and Memorials, who shall present suitable resolutions in memory of members who have died during the preceding year.

5. A Committee on Grievances, who shall be charged with the hearing of all complaints which may be made in matters affecting the interests of the legal profession and the practice of law and the administration of justice, and to report same to this Association with such recommendations as they may deem advisable; and said committee shall, in behalf of the Association, institute and carry on such proceedings against offenders, and to such extent as the Association may order, the cost of the proceedings to be paid by the Treasurer on the warrant of the Executive Committee out of any moneys subject to be appropriated by them.

6. A Committee to consist of five members and known as the Committee on Professional Ethics, who shall be charged with the duty of answering in writing all questions relating to the ethics of the legal profession submitted to them in writing by any member of this Association, that, in their judgment, ought to be answered, reporting to the Association all questions submitted to and answered by them, together with their answers thereto. Any question answered by them, together with their answer thereto, may be made public by them at any time they see fit.

7. A Committee to be composed of five members, of which the President shall be ex-officio member, whose duty it shall be to appear before the Legislature at each session thereof, at the expense of this Association, there to present and urge upon the Legislature the desirability of enacting into law such suggestions.

VII. Appointment

Each of the standing committees shall consist of five members, and shall be appointed annually by the President of the Association, and shall continue in office until the annual meeting of the Association next after their appointment and until their successors are appointed, with power to adopt rules for their own government, not inconsistent with the character, Constitution or these By-Laws. Any standing committee of the Association may, by rule, provide that three successive absences from the meetings of the com-

mittee, unexcused, shall be deemed a resignation by the member so absent from his place upon the committee. Any standing committee of the Association may, by rule, impose upon its members a fine for non-attendance, and may provide for the disposition of the fines collected under such rules.

All reports of standing and special committees shall be filed with the Secretary, in writing, not less than thirty days before the annual meeting of the Association.

VIII. Charges Against Members

Whenever any complaint shall be preferred against a member of the Association for misconduct in his relations to this Association, the member or members preferring such complaint shall present it to the Committee on Grievances, in writing, and subscribed by him or them, plainly stating the matter complained of, with particulars of time, place and circumstances. The committee shall carefully examine and consider the same after giving reasonable notice to the party against whom the complaint is made of the time and place of hearing, and shall report to the Association at the next annual meeting, recommending what action it should take in the premises.

IX. Charges Against Lawyers and Judges

All complaints which may be preferred against lawyers or judges, affecting their professional or official conduct shall be inquired into and examined by the Committee on Grievances, on behalf of the Association, in such manner as may be authorized and prescribed by the laws of the State.

X. Nominations and Elections

Nominations of candidates to fill the respective offices, except the office Secretary and Treasurer, may be made at the time of election by any member, and as many candidates may be nominated for each office as members may wish to name, but all elections, whether to office or membership, must be by ballot. A majority of the votes cast shall be sufficient to elect to office, but five negative votes shall be sufficient to defeat an election to membership.

XI. Supplying Vacancies

All vacancies in an office or committee of this Association shall be filled by appointment of the President and the persons thus appointed shall hold for the unexpired term of his predecessor; but if a vacancy in the office of President, it shall be filled by the Association at its first stated meeting occurring more than ten days after the happening of such vacancy, and the person elected shall hold for the unexpired term of his predecessor.

XII. Annual Dues

Each member shall pay to the Secretary and Treasurer of the Association the sum of five dollars annual dues, and an admission fee of five dollars shall be paid to the Secretary and Treasurer as the member is elected. All annual dues shall be paid on or before the first day of March in each year, and any member failing to pay his annual dues by that time shall be in default, provided ten days' notice thereof shall have been given him by the Secretary and Treasurer; and thereupon the Executive Committee may, without further notice, cause the name of such member to be stricken from the roll for non-payment of dues, and his membership, and all rights in respect thereto will thereupon cease. A member who has been dropped from the roll for non-payment of dues may be restored to membership by the Executive Committee upon the payment of such back dues as the committee shall think equitable.

XIII. Amendment of By-Laws

These By-Laws may be amended at any stated, adjourned or annual meeting of the Association by a majority of those present.

XIV. Resignation of Officers and Members

Any officer may resign at any time upon settling his accounts with the Association. A member may resign at any time upon the payment of all dues to the Association, and from the date of the receipt by the Secretary and Treasurer of a notice of resignation, provided that all dues have been paid, the person giving such notice shall cease to be a member of the Association.

XV. Salary of Secretary and Treasurer

The annual salary of the Secretary and Treasurer shall be three hundred dollars, one-half of which shall be due on the first day of May, and the other half on the first day of November in each year, but may be paid earlier, or at earlier times if the Executive Committee shall, in writing, so direct; but this shall be in full of all compensation to him. No other officer of the Association shall receive any salary or compensation.

XVI. Special Meetings

If the President and Executive Committee shall determine that it is necessary for the Association to hold any other meeting during the year than the regular annual meeting, the same shall be held at such time and place as the President and Executive Committee may fix, upon twenty days' notice of such time and place, to be given by the Secretary and Treasurer by publication in a newspaper and notice thereof to each member; and the Secretary and Treasurer shall give this notice upon order of the President.

XVII. Honorary Members

All judges of the Supreme, Circuit and Chancery Courts of this State and the United States Judge for the two districts of this State are honorary members of this Association, and they are relieved from the payment of admission fees and dues.

XVIII. Certificate of Membership

A certificate of membership shall be issued to each member of this Association upon his election and payment of initiation fee, which certificate shall be signed by the President and Secretary.

XIX. Annual Meetings

The annual meeting of the Association shall be held on the first Wednesday after the last Monday of April of each year, and the ladies constituting part of the family of members are invited to attend all proceedings, including the banquet.